

1. He failed to complete said dwelling in a substantial and workmanlike manner; and, to the contrary, the work was done in an unworkmanlike and unsubstantial manner and not in accordance with the plans, blueprints and specifications in that he did, or failed to do, the following:

- a. The interior trim was finished improperly.
- b. The interior trim was installed improperly.
- c. The windows were not finished.
- d. The doors were not finished.
- e. The hall walls were not paneled in accordance with the contract.
- f. The ceiling of the porch was not finished in accordance with the contract.
- g. The ceiling of the carport was not finished in accordance with the contract.
- h. The flashing was not installed on the windows.
- i. The flashing was not installed on the doors.
- j. The scroll was omitted in the kitchen.
- k. The kitchen counter top was improperly installed.
- l. The kitchen cabinets were not finished.
- m. The kitchen walls were not finished.
- n. The ceiling joists were improperly installed.
- o. The roof was not straight.
- p. The vents in the foundation were not plumb.
- q. The vents in the foundation were not screened.
- r. The window sills were not properly installed.
- s. The tile in the bathroom was improperly installed.
- t. The bathroom wall is out of plumb.
- u. The kitchen ceiling was improperly installed.
- v. The kitchen cabinet tops are not straight.
- w. The panelling at the washer connection was improperly installed.
- x. The panelling around the heater was improperly installed.
- y. The floors were finished improperly.
- z. The asbestos siding was installed in an unworkmanlike manner.
- a-1. The metal exterior corners were installed in an unworkmanlike manner.
- b-1. The fireplace was improperly constructed.
- c-1. The storage room door was hung improperly.
- d-1. The exterior trim was not caulked.
- e-1. The rod was not installed in the East bedroom closet.
- f-1. The East bedroom closet was not finished.
- g-1. The exterior steps were improperly built.
- h-1. The handrail was omitted on the rear steps.
- i-1. The metal edging on the carport was not installed.
- j-1. The metal edging on the porch was not installed.
- k-1. The edges on the concrete porches were not finished.
- l-1. The iron work on the front stoop was not painted.
- m-1. The ceiling on the front stoop was not painted.
- n-1. The casing on the livingroom closet was improperly installed.
- o-1. The small livingroom windows were improperly installed.
- p-1. The panelling on the North wall in the livingroom was improperly painted.
- q-1. The middle bedroom door was improperly hung.
- r-1. The sheetrock in the middle bedroom was not taped and cemented properly.
- s-1. The sheetrock in the medicine cabinet was improperly installed.
- t-1. The light in the bathroom was improperly installed.

and the Defendant, John D. Fox, Jr., has failed and refused to fix

and repair all of the errors and omissions hereinabove noted even though both he and the Defendant, The Fidelity & Casualty Company of New York, a corporation, have been requested on numerous occasions to do so; and said corporation has had written notice with full information of the acts and omissions of the Defendant, John D. Fox, Jr., and this action was commenced within twelve months from the time of the discovery of said acts and omissions on account of which claim is made; wherefore Plaintiff asks judgment in the above amount.

CHASON & STONE

By:

Marion V. Stone
Attorneys for Plaintiff

Filed
2-8-57

The Fidelity and Casualty Company of New York

AMERICA FIRE INSURANCE GROUP
A STOCK COMPANY

Know All Men by These Presents:

That John D. Fox, Jr.
of Fairhope, Alabama, State of Alabama
hereinafter called the **Principal**, and **THE FIDELITY AND CASUALTY COMPANY**
OF NEW YORK, hereinafter called the **Surety**, are held and firmly bound unto
Julius Webb

of Daphne, State of Alabama
hereinafter called the **Obligee**, in the sum of Eight Thousand Seven Hundred Fifty
and 00/100 ----- Dollars;
for the payment whereof to the **Obligee** the **Principal** binds himself,
his heirs, executors, administrators, successors, and assigns, and the
Surety binds itself, its successors and assigns, firmly by these presents.

Signed, sealed, and dated this 30th. day of September, 19 55

Whereas The **Principal** and the **Obligee** have entered into a written contract,
hereinafter called the **Contract**, for the construction of a Private Dwelling, located
at 513 N/S College Avenue, Daphne, Alabama.

dated the 20th. day of September, 19 55, a copy of which
is attached hereto:

Now, Therefore, the condition of the foregoing obligation is such that if the
Principal shall indemnify the **Obligee** for all loss that the **Obligee** may sustain by
reason of the **Principal's** failure to comply with any of the terms of the contract,
then this obligation shall be void; otherwise it shall remain in force.

(STANDARD CONTRACT BOND)

The foregoing obligation, however, is limited by the following express conditions, the performance of each of which shall be a condition precedent to any right of claim or recovery hereunder.

1. Upon the discovery by the Obligee, or by the Obligee's agent or representative, of any act or omission that shall or might involve a loss hereunder, the Obligee shall give immediate written notice thereof with the fullest information obtainable at the time to the surety at its home office.

2. If the Principal shall fail to comply with the provisions of the contract to such an extent that the contract shall be forfeited, the Surety shall have the right and opportunity to assume the remainder of the contract and at its option to perform or sublet the same.

3. In the event of any breach of the provisions of the contract, the Surety shall be subrogated to all the rights and properties of the Principal arising out of the contract. All deferred payments, and any and all moneys and properties, that are then, or that may thereafter become, due to the Principal under or by virtue of the contract shall be credited upon any claim that the Obligee may make upon the Surety.

4. Legal proceedings for recovery hereunder may not be brought unless begun within twelve months from the time of the discovery of the act or omission of the principal on account of which claim is made; but if the Surety shall assume the performance of the contract, the period within which legal proceedings for recovery hereunder may be brought shall be deemed extended twelve months beyond the date of failure of the Surety to perform the said contract. If any limitation set forth in this condition is prohibited by the statutes of the state in which this bond is issued, the said limitation shall be considered to be amended to agree with the minimum period of limitation permitted by such statutes.

5. The Principal shall be made a party to any suit or action for recovery hereunder, and no judgment shall be rendered against the Surety in excess of the penalty of this instrument.


6. The Surety shall not be liable for any damages resulting from strikes or labor difficulties, or from mobs, riots, fire, the elements, or acts of God, or for the repair or reconstruction of any work or material damaged or destroyed by any such cause; nor for damages for injury to person; nor for the non-performance of any guarantees of the efficiency or wearing qualities of any work done or materials furnished or the maintenance thereof or repairs thereto; nor for the furnishing of any bond or obligation other than this instrument; nor for damages caused by delay in finishing such contract in excess of ten per cent of the penalty of this instrument.

7. No change shall be made in the plans and specifications forming part of the contract that shall increase the amount to be paid to the Principal more than ten per cent of the penalty of this instrument, unless the Surety's consent thereto shall be secured in writing.

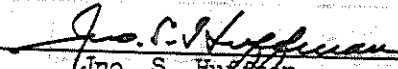
8. The Obligee shall retain such proportion as the contract specifies that the Obligee shall or may retain of the value of all work performed or materials furnished in the prosecution of the contract (but not less in any event than ten per cent of such value) until the Principal has completely performed all the terms, covenants, and conditions of the contract to be performed by the Principal.

9. No right of action shall accrue hereunder to or for the use or benefit of any one other than the Obligee, and the Obligee's rights hereunder may not be assigned without the written consent of the Surety.

In Witness Whereof this instrument has been executed by the duly authorized representatives of the Principal and the Surety.


John D. Fox, Jr. Fairhope, Alabama

The Fidelity and Casualty Company of New York

By 
Jno. S. Huffman, Attorney.
Fairhope, Alabama

The Fidelity and Casualty Company of New York

Power of Attorney

BONDING DEPARTMENT

80 MAIDEN LANE, NEW YORK, N. Y.

Know all Men by these Presents:

That The Fidelity and Casualty Company of New York has made, constituted, and appointed, and by these presents does make, constitute, and appoint
Jno. S. Huffman of Fairhope, Alabama

its true and lawful attorney for it and in its name, place, and stead to execute on behalf of the said Company, as surety, bonds, undertakings, and contracts of suretyship to be given to
all obligees

provided that no bond or undertaking or contract of suretyship executed under this authority shall exceed in amount the sum of fifteen thousand dollars.

In Witness Whereof The Fidelity and Casualty Company of New York has caused its official seal to be hereunto affixed, and these presents to be signed by one of its vice presidents and attested by one of its secretaries this 15th day of December, 1954

The Fidelity and Casualty Company of New York

By Carroll R. Young
Vice President.

Attest:

A. J. Miller

Secretary.

Bond 1245C. 5M. ★ (55019008)

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss.:

A. J. Miller, being duly sworn, deposes and says:

That he is a secretary of The Fidelity and Casualty Company of New York, the corporation which is described in and which executed the instrument overleaf; that he knows the corporate seal of the said corporation; that the seal affixed to the instrument overleaf is the corporate seal of The Fidelity and Casualty Company of New York, and was thereto affixed by order and authority of the board of directors of the said Company; that he signed his name thereto by like order and authority; that he is acquainted with CARROLL R. YOUNG, and knows him to be a Vice President of the said Company; that the signature of the said CARROLL R. YOUNG subscribed to the said instrument is in the genuine handwriting of the said CARROLL R. YOUNG, and was thereto subscribed by order and authority of the said board of directors of the said Company; that the said Company is duly and legally incorporated under the laws of the State of New York, and has complied with and is now complying with the provisions of the Act of Congress of August 13, 1894, allowing certain corporations to be accepted as surety on bonds.

The deponent further states that the following is a true copy of an extract from the minutes of a meeting of the board of directors of the said Company held at its office in the City of New York on the 15th day of December, 1954, a quorum being present, and the resolution contained in the said extract was unanimously adopted and is now in full force and effect:

"RESOLVED, That FRANK A. CHRISTENSEN, President of the Company, J. VICTOR HERD, Executive Vice President of the Company, WILLIAM L. BATES, HAROLD S. ROBINSON and CARROLL R. YOUNG, each a Vice President of the Company, be, and that each of them hereby is, authorized to execute powers of attorney qualifying the attorney named in the given power of attorney to execute in behalf of The Fidelity and Casualty Company of New York bonds, undertakings, and all contracts of suretyship; and that any Vice President, or any Secretary, or any Assistant Secretary be, and that each of them hereby is, authorized to attest the execution of any such power of attorney, and to attach thereto the seal of the Company."

Sworn to before me this

A. J. Miller

Secretary.

15th day of December, 1954

Florence Carroll

COMMISSIONER OF DEEDS,
CITY OF NEW YORK.

I, A. J. Miller, a secretary of The Fidelity and Casualty Company of New York, do hereby certify that I have compared the copy of the power of attorney overleaf and the foregoing copy of the affidavit annexed to the said power of attorney with the originals now on file in the home office of the said Company, and that the same are correct transcripts therefrom and of the whole of the said originals, and that the said power of attorney has not been revoked and is now in full force and effect.

In testimony whereof I have hereunto set my hand and affixed the seal of the said Company this

30th day of September, in the year of one thousand nine hundred and Fifty Five.

A. J. Miller

Secretary.

STATE OF ALABAMA)
BALDWIN COUNTY)

CONTRACT TO BUILD

THIS AGREEMENT AND CONTRACT, made and entered into on this 20th day of September, 1955 between JULIUS WEBB, hereinafter referred to as the Purchaser and JOHN D. FOX, JR., hereinafter referred to as the Contractor,

WITNESSETH:

The Contractor and Purchaser, in consideration of the covenants herein contained and the sum hereinafter named, agree as follows:

FIRST: The Contractor shall erect and build a dwelling house in a substantial and workmanlike manner on that certain property of the Purchaser in Daphne, Alabama described as that parcel of land owned by the Purchaser in the Dryer tract Section 41, Township 5, Range 2 East in the City of Daphne, Alabama, being a parcel of land 94.66 feet by 150 feet, all in accordance with the description of materials set forth on FHA Form 2005, Case Number 61-505873 and the blueprints agreed to by and between the parties hereto and approved by FHA.

SECOND: The Contractor shall commence the work to be performed under this contract within one week from the date hereof, and shall in respect to the aforesaid work generally comply with the minimum building and other regulations of the Federal Housing Administration.

THIRD: The Contractor shall complete and deliver possession of the said dwelling within a reasonable time unless prevented by strikes, accidents, weather, and other reasonable causes, in which case the Contractor shall have the power to extend the date of possession accordingly.

FOURTH: The Purchaser in consideration of the covenants and agreements herein contained hereby agrees to pay to the Contractor a sum in the amount of Eight Thousand Seven Hundred and Fifty Dollars (\$8,750.00) to be paid on a "work completed in a satisfactory manner" as follows:

(a) One-third of total amount on completion of first inspection by FHA Authorities.
(b) One-third of total amount on completion of second inspection by FHA Authorities.

(c) Balance of total amount on final FHA inspection and acceptance.

FIFTH: Should the Purchaser fail to obtain a FHA insured loan and the buildings thereon having in all manner complied with and been properly certified by the FHA, then upon rejection of said mortgage loan, the Purchaser shall have fifteen (15) days in which to complete his part of the agreement by means other than a FHA insured mortgage loan.

SIXTH: Should the said Purchaser or the Contractor fail to perform this agreement promptly on their parts and in the manner herein stated, the property specified above will be evaluated at the fair marketable price, less the value of any appurtenances, hereditaments, and tenements thereon, and the Purchaser shall be reimbursed in that amount, and the Purchaser does hereby agree for himself, his heirs and assigns, to convey the said premises to the Contractor by good and sufficient Warranty Deed with full release of all lower interests.

SEVENTH: It is agreed by and between the parties that the title to all building materials brought onto the Purchasers lot for the use in building the said house shall and will remain in the Contractor.

EIGHTH: The above mentioned blueprints and description of materials, together with this agreement constitute the contract and such blueprints and description are as fully a part of this contract as if hereto attached or herein repeated. If there are changes or deviations from the blueprints or description of materials, Purchaser does hereby agree that he will equitably assume the cost and an adjustment of the contract price will be made and the Purchaser does further agree to pay for such additional construction.

NINTH: Before the final payment is made the Contractor shall submit evidence satisfactory to the Purchaser that all payrolls, materials and other indebtedness connected with the work are fully paid or will be paid from the final payment.

TENTH: It is further mutually agreed between the parties hereto that the sum to be paid by the Purchaser as stated above does not include any costs for clearing the premises on which the house is to be constructed, landscaping nor construction of a shell driveway and the
any loan procurement or closing costs, (J.D.F.--J. C. W.)

Purchaser does agree to have the said work done at his own expense and in such a manner as to not delay the completion of construction by the Contractor nor to delay the final inspection heretofore referred to and will generally comply with the minimum regulations of the FHA.

ELEVENTH: The above mentioned specifications of materials and plans together with this agreement constitute the contract and such specifications of materials and plans are as fully a part of this contract as if hereto attached or herein repeated.

IN WITNESS WHEREOF, the parties hereto have executed this agreement in duplicate on the day and year first above written.

/s/ Julius Webb (Seal)
Julius Webb, Purchaser

/s/ John D. Fox, Jr. (Seal)
John D. Fox, Jr.

STATE OF ALABAMA)
BALDWIN COUNTY)

I, the undersigned notary public in and for the state of Alabama at Large, certify that Julius Webb and John D. Fox, Jr., whose names are signed to the foregoing contract and who are known to me, acknowledged before me on this day that, being informed of the contents of the contract, they executed the same voluntarily on the day the same bears date.

Given under my hand theis 20th day of September, 1955.

My commission expires 14 July 1958.

SEAL

/s/ Ernest M. Bailey
Notary Public

STATE OF ALABAMA }
Baldwin County }

THIS AGREEMENT made and entered into this ____ day of September, 1955 by and between JULIUS WEBB, hereinafter referred to as the Purchaser and JOHN D. FOX, JR., hereinafter referred to as the Contractor, WITNESSETH:

That whereas the parties have this day entered into an agreement whereby Contractor is to construct a dwelling house on certain premises named therein and owned by Purchaser, the parties further agree as follows:

That the Contractor will install a 65,000.00 BTU floor furnace in the dwelling to be constructed in lieu of a 50,000.00 BTU furnace.

(1) Two-radiant wall gas heater in the bathroom and a Three-
/s/ J.D.Fox radiant wall gas heater in the kitchen.
(1) Ceiling light in dining room

This agreement is made a part of the referred to contract as if attached or repeated therein.

IN WITNESS WHEREOF, the parties hereto have executed this agreement in duplicate on the day and year first above written.

/s/ Julius Webb (Seal)
Julius Webb, Purchaser

/s/ John D. Fox, Jr. (Seal)
John D. Fox, Jr.

ATTESTED BY:

The prime or original contract referred to above is subject to the approval of Mr. Haas, Merchants National Bank of Mobile.

/s/ Julius Webb

/s/ John D. Fox, Jr.

JULIUS C. WEBB,

Plaintiff,

vs.

THE FIDELITY & CASUALTY
COMPANY OF NEW YORK, A
Corporation,

Defendant.

X

X

X

X

X

X

X

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

3028

Comes now the Plaintiff in the above styled cause, by his attorneys, and demurs to the pleas as last amended filed by the Defendant to the amended complaint and assigns the following separate and several grounds in support thereof.

1. That said pleas are immaterial.
2. That said pleas do not constitute a defense to this cause of action.

CHASON & STONE

FILED
MAY 24 1960
ALICE J. DUCK, Clerk

By:


Attorneys for Plaintiff

JULIUS C. WEBB,

Plaintiff,

VS.

THE FIDELITY AND CASUALTY
COMPANY OF NEW YORK, a
corporation, and JOHN D.
FOX, JR.,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

NO. 3038

MOTION TO STRIKE

1. Now come the defendants, each separately and severally, and move to strike that part of Count One of plaintiff's complaint as last amended which reads as follows:

"Twenty Dollars (\$20.00) as the amount paid by the Plaintiff to Mrs. Louise Dusenbury for the taking of a deposition upon oral examination in that certain cause in the Circuit Court of Baldwin County, Alabama, in Equity, numbered 3807 wherein John D. Fox, Jr. was the Complainant and Cross-respondent and the Plaintiff was the Respondent and Cross-complainant; One Thousand and Ten and 61/100 Dollars (\$1,010.61) as reasonable attorney's fee paid to W. O. MacMahon, III, and Chason & Stone, Attorneys at Law, for services rendered by them for and on behalf of the Plaintiff in regard to the defense of the suit hereinabove referred to and in the prosecution of the counter-claim of the Plaintiff in said suit,"

and as grounds of such motion assign, separately and severally, the following:

A. It improperly includes in the complaint items of post litem damages.

B. It is prolix.

C. It is irrelevant.

D. It is frivolous.

E. It is unnecessarily repeated.

2. Now come the defendants, each separately and severally, and move to strike that part of Count Two of plaintiff's complaint as last amended which reads as follows:

"Sixth, that the Defendants have failed to pay to the Plaintiff the sum of Twenty Dollars (\$20.00) as damages which the plaintiff sustained by reason of having to pay to Mrs. Louise Dusenbury said sum for the taking of a deposition upon oral examination in that certain cause in the Circuit Court of Baldwin County, Alabama, In Equity, numbered 3807 wherein John D. Fox, Jr., was the Complainant and Cross-respondent and the Plaintiff was the Respondent and

JULIUS C. WEBB,

Plaintiff,

VS.

THE FIDELITY AND CASUALTY
COMPANY OF NEW YORK, a cor-
poration, and JOHN D. FOX,
JR.,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

NO. 3038

DEMURRER TO AMENDED COMPLAINT

Now come the defendants, each separately and severally, and demur to the complaint as last amended and to each and every count thereof, separately and severally, and as grounds of such demurrer assign, separately and severally, the following:

1. It does not state a cause of action.
2. No facts are alleged on which the relief sought can be granted.
3. No facts are alleged to show that the contract between the plaintiff and the defendant, Fox, which is referred to in the amended complaint, obligated the defendant, Fox, to pay the attorney's fees or the expenses for taking a deposition upon oral examination, which are claimed in the amended complaint.
4. No facts are alleged to show that the defendant, Fox, agreed in the written contract with the plaintiff, Webb, to pay attorney's fees or the cost of taking a deposition upon oral examination, which are claimed in the complaint.
5. No facts are alleged to show that the written agreement between the plaintiff and the defendant, Fox, required the said defendant to pay the various items of damages which are claimed in the amended complaint.
6. It affirmatively appears from the amended complaint that the written contract between the plaintiff and the defendant, Fox, which is referred to in the complaint, contained no provision requiring the defendants, or either of them, to pay the attorney's fees and the expense of taking a deposition upon oral examination, which are claimed in the amended complaint.
7. It affirmatively appears from the amended complaint

DEMURRER TO AMENDED COMPLAINT

JULIUS C. WEBB,

Plaintiff,

VS.

THE FIDELITY AND CASUALTY COMPANY
OF NEW YORK, a corporation, and
JOHN D. FOX, JR.,

Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW NO. 3038

FILED
SEP 9 1938
ALICE J. DUCK, CLERK
REGISTER

J. B. BLACKBURN
ATTORNEY AT LAW
BAY MINETTE, ALABAMA

JULIUS C. WEBB,

Plaintiff,

vs.

THE FIDELITY & CASUALTY COMPANY
OF NEW YORK, a corporation, and
JOHN D. FOX, JR.,

Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW

Comes now the Plaintiff in the above styled cause, by his attorneys and demurs to the motion heretofore filed in the same and assigns the following separate and several grounds in support thereof:

1. Said motion is not verified by affidavits.
2. Said motion is not verified by the affidavit of either of the Defendants or their attorney.
3. It affirmatively appears from the allegations of the motion that this cause and the cause therein referred now pending in the Equity Court are two separate and distinct causes of action.
4. No facts are alleged to show that any equitable question, the decision of which would dispose of the cause and which cannot be disposed of in the law side of the court, is presented in this cause.
5. No facts are alleged to entitle the Defendants, or either of them, to have this cause transferred to the equity side of this Court.
6. No facts are alleged to entitle the Defendant, The Fidelity & Casualty Company of New York, a corporation, to have this cause transferred to the equity side of this Court.
7. No facts are alleged to affirmatively show that as to the Defendant, The Fidelity & Casualty Company of New York, a corporation, that this cause presents an equitable question, the decision of which would dispose of said cause and which cannot be disposed of in the law side of the Court.
8. No facts are alleged to affirmatively show that as

to the Defendant John D. Fox, Jr., that this cause presents an equitable question, the decision of which would dispose of said cause and which cannot be disposed of in the law side of the Court.

9. It affirmatively appears from the allegations of the motion that the Defendants in this cause are not entitled to have the same transferred.

10. The allegation of the motion "The contract which forms the basis of this suit, and which is described in the original and amended complaint filed in this suit, is the same contract which forms the basis of the above described equity suit" is a conclusion of the pleader.

11. It affirmatively appears from the allegation of the motion that the Defendant, The Fidelity & Casualty Company of New York, a corporation, is not a party to the equity proceeding therein referred to.

12. It affirmatively appears from the allegation of the motion that the Defendant, The Fidelity & Casualty Company of New York, a corporation, is not a proper party to the equity proceeding therein referred to.

13. The allegation of the motion that "the said equity case and this case involve...the same cause of action as that involved in this suit" is a conclusion of the pleader.

14. For aught that appears from the allegations of the motion neither of the Defendants are entitled to interpose any equitable defense to the cause of action herein sued on.

15. The motion fails to set up any equitable right in either of the Defendants to entitle them to a transfer of this cause.

16. No facts are alleged to show what equitable defense, if any, the Defendants, or either of them, have to the cause of action herein sued on.

17. Said motion sets forth no facts verified by the affidavit of either of the Defendants.

CHASON & STONE

By: 

Attorneys for Plaintiff

Filed
2-19-57

3038

JULIUS C. WEBB,

Plaintiff,

vs.

THE FIDELITY & CASUALTY
COMPANY OF NEW YORK, a cor-
poration, and JOHN D. FOX, JR.

Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW

DEMURRER

FILED
FEB 19 1957
ALICE L. DUCK, Clerk

LAW OFFICE
CHASON & STONE
Bay Minette, Alabama

JULIUS C. WEBB,	X	
Plaintiff,	X	
	X	IN THE CIRCUIT COURT OF
vs.	X	
	X	BALDWIN COUNTY, ALABAMA
THE FIDELITY & CASUALTY	X	
COMPANY OF NEW YORK, a	X	
corporation, et al.,	X	AT LAW NO. 3038
Defendants.	X	
	X	

MOTION TO STRIKE

Comes now the Plaintiff in the above styled cause, by his attorneys, and moves to strike the Plea in Abatement heretofore filed in this cause on behalf of the Defendants and as grounds for said motion assigns, separately and severally, the following:

1. No facts are alleged in said Plea in Abatement which, if proved, would entirely defeat this particular action.
2. No facts are alleged in said Plea in Abatement which constitute a valid objection to the writ heretofore issued by this Court.
3. No facts are alleged which constitute a valid objection to the jurisdiction of this Court.
4. No facts are alleged in said Plea in Abatement which affect the cause of action embodied within the Complaint nor which, if true, would abate the present suit.
5. No facts are alleged in said Plea in Abatement which, if true, would entirely defeat this particular action.
6. That said Plea in Abatement comes too late.

Respectfully submitted,

CHASON & STONE

FILED
MAR 9 1980
ALICE L. DUCK, CLERK
REGISTER

By: 

JULIUS C. WEBB,

Plaintiff

vs.

THE FIDELITY & CASUALTY COMPANY
OF NEW YORK, a corporation, et
al.

Defendants.

* * * * *

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

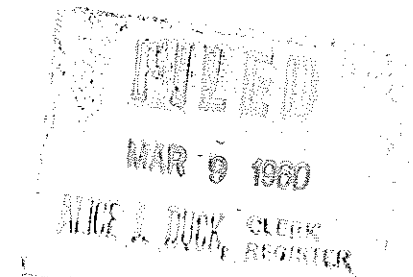
AT LAW

NO. 3038

* * * * *

MOTION TO STRIKE

* * * * *



LAW OFFICES

CHASON & STONE

BAY MINETTE, ALABAMA

JULIUS C. WEBB,

Plaintiff,

vs.

THE FIDELITY AND CASUALTY
COMPANY OF NEW YORK, a
corporation, and JOHN D.
FOX, JR.,

Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW. NO. 3038.

DEMURRER TO AMENDED COMPLAINT

Now come the Defendants, each separately and severally, and for demurrer to the amended complaint filed February 8, 1957, assign separately and severally the following:

1. It does not state a cause of action.
2. The alleged written agreement between the plaintiff and the defendant, John D. Fox, Jr., is not set out in or made a part of the amended complaint.
3. No facts are alleged to show the legal effect of the alleged written agreement between the plaintiff and the defendant, John D. Fox, Jr.
4. No facts are alleged to show that the defendant, John D. Fox, Jr., has failed to comply with the terms and provisions of the alleged written agreement with the plaintiff.
5. No facts are alleged to show any duty to or owing the plaintiff by the defendant, John D. Fox, Jr.
6. No facts are alleged to show that the defendant, John D. Fox, Jr., has breached any duty to the plaintiff.
7. No facts are alleged to show how or in what way the defendant, John D. Fox, Jr., has failed to comply with his alleged written agreement with the plaintiff.
8. No facts are alleged to show that the plaintiff's alleged losses were caused by the defendant, John D. Fox, Jr.
9. The allegations of the amended complaint are conclusions of the pleader.
10. The allegations of the amended complaint are conclusions of the pleader and no facts are alleged to show that the defendants, or either of them, are liable to the plaintiff on the alleged bond.

11. No facts are alleged to show how the condition of the alleged bond was broken.

12. No facts are alleged to show when the condition of the alleged bond was broken.

13. No facts are alleged to show any obligation of the defendants, or either of them, on the alleged bond.

14. It affirmatively appears that the entire contract between the plaintiff and the defendant, John D. Fox, Jr., is not set out in the amended complaint.

15. The allegations of the amended complaint are vague, indefinite and uncertain because the entire contract between the plaintiff and the defendant, John D. Fox, Jr., is not set out in the amended complaint.

16. No facts are alleged to show that the contract between the plaintiff and the defendant, John D. Fox, Jr., required the defendant, John D. Fox, Jr., to install any interior trim.

17. No facts are alleged to show how the alleged contract between the plaintiff and the defendant, John D. Fox, Jr., required the defendant, John D. Fox, Jr., to install interior trim.

18. No facts are alleged to show how the Defendant, John D. Fox, Jr., was required to finish the windows.

19. No facts are alleged to show how the defendant, John D. Fox, Jr., was required to finish the doors.

20. No facts are alleged to show that the defendant, John D. Fox, Jr., was required to panel the hall walls.

21. No facts are alleged to show how the contract required the defendant, John D. Fox, Jr., to panel the hall walls.

22. No facts are alleged to show how the defendant, John D. Fox, Jr., was required to finish the porch ceiling.

23. No facts are alleged to show that the defendant, John D. Fox, Jr., was required to ceil the carport.

24. No facts are alleged to show how the defendant, John D. Fox, Jr., was required to finish the ceiling of the carport.

25. No facts are alleged to show that the contract required the defendant, John D. Fox, Jr., to flash the windows.

26. No facts are alleged to show that the alleged contract required the defendant, John D. Fox, Jr., to flash the doors.

27. No facts are alleged to show that the alleged contract required the defendant, John D. Fox, Jr., to install any scroll in the kitchen.

28. No facts are alleged to show that the alleged contract required the defendant, John D. Fox, Jr., to install any kitchen counter top.

29. No facts are alleged to show how the defendant, John D. Fox, Jr., was required to install any kitchen counter top.

30. No facts are alleged to show that the alleged contract required the defendant, John D. Fox, Jr., to install kitchen cabinets.

31. No facts are alleged to show that the alleged contract required the defendant, John D. Fox, Jr., to finish any kitchen cabinets.

32. No facts are alleged to show that the alleged contract specified the manner in which the kitchen cabinets were to be finished.

33. No facts are alleged to show that the alleged contract required the defendant, John D. Fox, Jr., to finish the kitchen walls.

34. No facts are alleged to show that the alleged contract required the defendant, John D. Fox, Jr., to finish the kitchen walls in any particular way or manner.

35. No facts are alleged to show that the alleged contract required the defendant, John D. Fox, Jr., to install the ceiling joists in any certain way or manner.

36. No facts are alleged to show how the alleged contract required the defendant, John D. Fox, Jr., to install the ceiling joists.

37. No facts are alleged to show what part of the roof is not straight.

38. No facts are alleged to show that the alleged contract required the defendant, John D. Fox, Jr., to install any vents in the foundation.

39. No facts are alleged to show that the alleged contract specified any certain way or manner in which the vents in the foundation were to be installed.

40. No facts are alleged to show that the alleged contract required that the defendant, John D. Fox, Jr., install screened vents in the foundation.

41. No facts are alleged to show how the alleged contract required the defendant, John D. Fox, Jr., to install window sills.

42. No facts are alleged to show that the alleged contract required the defendant, John D. Fox, Jr., to install any tile in the bathroom.

43. No facts are alleged to show how the alleged contract required the defendant, John D. Fox, Jr., to install tile in the bathroom.

44. No facts are alleged to show that the alleged contract required the defendant, John D. Fox, Jr., to ceil the kitchen.

45. No facts are alleged to show how the alleged contract required the defendant, John D. Fox, Jr., to ceil the kitchen.

46. No facts are alleged to show that the alleged contract required the defendant, John D. Fox, Jr., to install kitchen cabinet tops.

47. No facts are alleged to show how the alleged contract required the defendant, John D. Fox, Jr., to install panelling at the washer connection.

48. No facts are alleged to show how the alleged contract required the defendant, John D. Fox, Jr. to install panelling around the heater.

49. No facts are alleged to show how the alleged contract required that the defendant, John D. Fox, Jr., finish the floors.

50. No facts are alleged to show that the alleged contract required the Defendant, John D. Fox, Jr., to finish the floors

51. No facts are alleged to show that the alleged contract required the defendant, John D. Fox, Jr., to install asbestos siding.

52. No facts are alleged to show how the alleged contract required that the defendant, John D. Fox, Jr., install the asbestos siding.

53. No facts are alleged to show that the alleged contract required the defendant, John D. Fox, Jr., to install metal exterior corners.

54. No facts are alleged to show how the alleged contract required the defendant, John D. Fox, Jr., to install metal exterior corners.

55. No facts are alleged to show that the alleged contract required the defendant, John D. Fox, Jr., to construct a fireplace.

56. No facts are alleged to show how the alleged contract required the defendant, John D. Fox, Jr., to construct a fireplace.

57. No facts are alleged to show that the alleged contract required the defendant, John D. Fox, Jr., to hang a storage room door.

58. No facts are alleged to show how the alleged contract required the defendant, John D. Fox, Jr., to hang a storage room door.

59. No facts are alleged to show that the alleged contract required the defendant, John D. Fox, Jr., to caulk the exterior trim.

60. No facts are alleged to show that the alleged contract required the defendant, John D. Fox, Jr., to install a rod in the East bedroom closet.

61. No facts are alleged to show that the alleged contract required the defendant, John D. Fox, Jr., to finish the East bedroom closet.

62. No facts are alleged to show how the alleged contract required the defendant, John D. Fox, Jr., to finish the East bedroom closet.

63. No facts are alleged to show how the alleged contract required that the exterior steps be built.

64. No facts are alleged to show that the alleged contract required the defendant, John D. Fox, Jr., to build exterior steps.

65. No facts are alleged to show that the alleged contract required the defendant, John D. Fox, Jr., to install a hand rail on the rear steps.

66. No facts are alleged to show that the alleged contract required the defendant, John D. Fox, Jr., to install metal edging on the carport.

67. No facts are alleged to show that the alleged contract required the defendant, John D. Fox, Jr., to install metal edging on the porch.

68. No facts are alleged to show that the alleged contract required the defendant, John D. Fox, Jr., to finish any concrete porches.

69. No facts are alleged to show how the alleged contract required the defendant, John D. Fox, Jr., to finish the concrete porches.

70. No facts are alleged to show that the alleged contract required the defendant, John D. Fox, Jr., to do any iron work on the front stoop.

71. No facts are alleged to show that the alleged contract required the defendant, John D. Fox, Jr., to paint the iron work on the front stoop.

72. No facts are alleged to show that the alleged contract required the defendant, John D. Fox, Jr., to paint the ceiling on the front stoop.

73. No facts are alleged to show how the alleged contract required the defendant, John D. Fox, Jr., to paint the ceiling on the front stoop.

74. No facts are alleged to show that the alleged contract required the defendant, John D. Fox, Jr., to install any casing on the livingroom closet.

75. No facts are alleged to show how the alleged contract required the defendant, John D. Fox, Jr., to install the casing on the livingroom closet.

76. No facts are alleged to show how the contract required the defendant, John D. Fox, Jr., to install the livingroom windows.

77. No facts are alleged to show how the defendant, John D. Fox, Jr., was required to paint the panelling on the North wall in the livingroom.

78. No facts are alleged to show that the alleged contract required the defendant, John D. Fox, Jr., to paint the panelling on the North wall in the livingroom in any particular way or manner.

79. No facts are alleged to show how the alleged contract required that the defendant, John D. Fox, Jr., hang the middle bedroom door.

80. No facts are alleged to show that the alleged contract required the defendant, John D. Fox, Jr., to install sheet-rock in the middle bedroom.

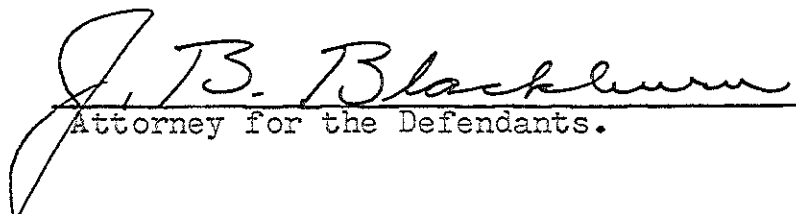
81. No facts are alleged to show how the alleged contract required the defendant, John D. Fox, Jr., to install sheet-rock in the middle bedroom.

82. No facts are alleged to show that the alleged contract required the defendant, John D. Fox, Jr., to install sheet-rock in the medicine cabinet.

83. No facts are alleged to show how the alleged contract required the defendant, John D. Fox, Jr., to install sheet-rock in the medicine cabinet.

84. No facts are alleged to show that the alleged contract required the defendant, John D. Fox, Jr., to install a light in the bathroom.

85. No facts are alleged to show how the defendant, John D. Fox, Jr., was required to install a light in the bathroom.


Attorney for the Defendants.

FILED

JUN 13 1957

ALICE D. DUCK, Clerk

THE FIDELITY & CASUALTY COMPANY X
OF NEW YORK, A CORPORATION, X

Plaintiff, X

vs. X

JULIUS W. WRIGHT, X

Defendant. X

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

LAW SIDE

PETITION TO REVIVE JUDGMENT

TO THE HONORABLE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA, LAW SIDE,
AND TO THE HONORABLE HUBERT M. HALL, JUDGE THEREOF:

Comes now the Plaintiff in the above styled cause, by its attorneys of record, and respectfully represents and shows unto this Honorable Court as follows:

That the Plaintiff is the owner and holder of a judgment obtained in this Honorable Court in that certain cause numbered 1291, on the 2nd day of March, 1949, in the principal amount of One Thousand Three Hundred and Eighty-four Dollars and Ninety-eight Cents (\$1,384.98), against the above named Julius W. Wright, the Defendant in said cause. That no payment has been made on such judgment or the cost of court and such judgment remains unsatisfied. That an execution was issued against the Defendant on the 11th day of June, 1949, for the sum of One Thousand Three Hundred Eighty-four Dollars and Ninety-eight Cents (\$1,384.98) plus Eleven Dollars and Twenty-five Cents (\$11.25) cost of court and such execution was returned to this Honorable Court on the 29th day of July, 1949, with the endorsement by the Sheriff of Baldwin County, Alabama, that he found no property of the Defendant upon which he could levy. That a certificate of judgment was issued by the Clerk of this Court on March 10, 1949, and was filed for record in the Office of the Judge of Probate of Baldwin County, Alabama, on March 12, 1949, and is recorded in Judgment Book 4, at page 246. The said Julius W. Wright, the Defendant in the above styled cause, is a resident of the State of Alabama, residing at Summerdale, Alabama.


WHEREFORE, the Plaintiff respectfully prays that a Writ of Scire Facias issue out of this Honorable Court, requiring the De-

fendant Julius W. Wright to show cause, if any, within thirty (30) days after service of such Writ, why said judgment should not be in all things revived and execution issued on the same, and that upon the hearing of this petition, if no legal reason be shown why said judgment should not be revived, an order reviving the same be entered with provisions for execution.

Respectfully submitted,

CHASON & STONE

By:


Attorneys for Fidelity & Casualty
Company of New York, a Corporation

Filed
6-20-59

The above petition having been this day filed in this Court and the same having been brought to the attention of the Court, and upon consideration of the same by the Court, it is

ORDERED that a Writ of Scire Facias issue by the Clerk of this Court to the said Julius W. Wright in accordance with the statutes in such cases made and provided.

Done this 18 day of June, 1959.


Circuit Judge

[Handwritten signature]

THE FIDELITY & CASUALTY COMPANY
OF NEW YORK, A CORPORATION,

Plaintiff,

vs.

JULIUS W. WRIGHT,

Defendant.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

LAW SIDE

PETITION TO REVIVE JUDGMENT

FILED

JUN 20 1959

ALICE T. DUCK, CLERK
REGISTER

LAW OFFICES

CHASON & STONE

BAY MINETTE, ALABAMA

STATE OF ALABAMA

BALDWIN COUNTY

IN THE CIRCUIT COURT OF BALDWIN COUNTY

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to forthwith serve the within Writ personally on Julius W. Wright at Summerdale, Alabama, or wherever he may be found within this State.

Witness my hand on this the 23 day of June, 1959.


Clerk

THE FIDELITY & CASUALTY COMPANY X
OF NEW YORK, A CORPORATION, X

Plaintiff, X

vs. X

JULIUS W. WRIGHT, X

Defendant. X

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

LAW SIDE

TO: JULIUS W. WRIGHT

You will take notice that the Plaintiff in the above styled cause has filed a petition in the Circuit Court of Baldwin County, Alabama, to revive a judgment rendered against you on March 2, 1949, in favor of said Plaintiff in the sum of One Thousand Three Hundred Eighty-four Dollars and Ninety-eight Cents (\$1,384.98) and the additional sum of Eleven Dollars and Twenty-five Cents (\$11.25), cost of court, being cause number 12-91 in said Court.

NOW, THEREFORE, you are hereby notified to show cause, if any you have, within thirty days after the service hereof, why said judgment should not be revived against you.

Witness my hand this the 23 day of June, 1959.


Circuit Clerk

THE FIDELITY & CASUALTY
COMPANY OF NEW YORK, A COR-
PORATION,

Plaintiff,

VS.

JULIUS W. WRIGHT,

Defendant

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

LAW SIDE

NOTICE OF PETITION TO REVIVE
JUDGMENT

FILED

JUN 20 1959

ALICE J. DUCK, CLERK
REGISTER

LAW OFFICES
CHASON & STONE
BAY MINETTE, ALABAMA

Received 23 day of June 1959
and on 24 day of June 1959
I served a copy of the within
on Julius W. Wright

TAYLOR WILKINS, Sheriff
By *Robert D. Wright*

James H. Wright

Sheriff claims 60 miles at
Ten Cents per mile Total \$ 6.00
TAYLOR WILKINS, Sheriff
BY DEPUTY SHERIFF

JULIUS C. WEBB,

Plaintiff,

VS.

THE FIDELITY AND CASUALTY
COMPANY OF NEW YORK, a
corporation, and JOHN D.
FOX, JR.,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

NO. 3038

AMENDED MOTION

Now come the defendants, each separately and severally,
and show unto the court as follows:

1. John D. Fox, Jr., as complainant, filed a suit in
the Circuit Court of Baldwin County, Alabama, in Equity, on
June 12, 1956, against Julius Clarence Webb and Leila Glover Webb
to enforce a mechanic's and materialman's lien. A copy of the
Summons and Bill of Complaint in the said cause was served on
Leila Glover Webb on June 12, 1956, and a copy of the Summons and
Bill of Complaint was served on the respondent, Julius Clarence
Webb, on June 18, 1956.

The said respondents filed a demurrer in the said cause
on July 10, 1956, which was sustained by the Judge of the Circuit
Court of Baldwin County, Alabama, in Equity, on October 18, 1956.

On November 10, 1956, the complainant filed an amended
Bill of Complaint in the said cause, and on February 7, 1957, the
said respondents filed a demurrer to the amended Bill of Complaint.
Up to the time of the filing of this motion no decree has been
rendered overruling or sustaining the respondents' said demurrer to
the amended Bill of Complaint in the said cause.

2. John D. Fox, Jr., who is one of the defendants in
this suit, is the same person as John D. Fox, Jr., who is the com-
plainant in the above described equity suit, and Julius C. Webb,
who is the plaintiff in this suit, is the same person as Julius
Clarence Webb, who is one of the respondents in the above described
equity suit.

The contract which forms the basis of this suit, and
which is described in the original and amended complaint filed in

45
this suit, is the same contract which forms the basis of the above described equity suit. The said equity case and this case involve the same property and the same cause of action as that involved in this suit.

WHEREFORE, defendants move the court to transfer this cause to the Circuit Court of Baldwin County, Alabama, in Equity, and consolidate this cause with the pending equity case, which is described above.

Defendants move the court to grant unto them such other, further and general relief as they may be properly entitled to, the premises considered.

J. B. Blackburn
Attorney for defendants

STATE OF ALABAMA)
*
BALDWIN COUNTY)

Before me, the undersigned authority, within and for said County in said State, personally appeared J. B. BLACKBURN, who, after being by me first duly and legally sworn, deposes and says: That he is attorney for the defendants in the above entitled cause; that he has read over the foregoing motion and that the facts stated therein are true.

J. B. Blackburn

Sworn to and subscribed before me on
this the 16th day of April, 1957.

[Signature]
Notary Public, Baldwin County, Alabama

Filed
4-16-57

JULIUS C. WEBB,

Plaintiff,

VS.

THE FIDELITY AND CASUALTY
COMPANY OF NEW YORK, a cor-
poration, and JOHN D. FOX,
JR.,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

NO. 3038

PLEA IN ABATEMENT

Now come the defendants and for plea in abatement to the complaint as last amended and to each and every count thereof, separately, saith:

That on, to-wit, September 20, 1955, the defendant, John D. Fox, Jr., entered into the written agreement with the plaintiff, Julius Clarence Webb, and the defendant, John D. Fox, Jr., and the plaintiff, Julius Clarence Webb, also entered into the written amendment to the said written contract, which amendment is dated September ____, 1955. The said agreement and the amendment thereto are attached to and made a part of the amended complaint which the plaintiff filed in this cause on, to-wit, February 8, 1957, in which amended complaint the two said instruments are referred to and identified as Exhibit B thereto. The defendant, John D. Fox, Jr., as Principal, and the defendant, The Fidelity and Casualty Company of New York, a corporation, as Surety, gave the bond on which this suit was brought to the plaintiff on, to-wit, September 30, 1955, a copy of which bond is attached to the plaintiff's amended complaint which was filed in this cause on, to-wit, February 8, 1957, where it is identified and referred to as Exhibit A thereto.

On, to-wit, June 7, 1956, the defendant, John D. Fox, Jr., filed a bill of complaint in the Circuit Court of Baldwin County, Alabama, in Equity, against Julius Clarence Webb, the plaintiff in this suit, and Leila Glover Webb, to enforce a mechanic's and materialman's lien on the property and improvements described in the said contract between the plaintiff, Julius Clarence Webb, and

the defendant, John D. Fox, Jr., dated September 20, 1955, and the amendment thereto dated September ____, 1955, which are referred to above, as will appear from the copy of the bill of complaint which was filed in the said equity case, a copy of which is hereto attached, marked Exhibit A, and by reference made a part hereof as though fully incorporated herein. (The said Exhibit A which is attached hereto includes as a part thereof Exhibits A and B thereto, which formed a part of the said bill of complaint and are the same contract and amendment referred to above.)

Subsequently and on, to-wit, November 2, 1956, the complainant in the said equity case filed an amended complaint therein, a copy of which said amended complaint is hereto attached, marked Exhibit B, and by reference made a part hereof as though fully incorporated herein; thereafter and on, to-wit, May 10, 1957, the respondents in the said equity case, namely, Julius Clarence Webb, who is the plaintiff in this case, and Leila Glover Webb filed an answer and cross bill in the said cause, a copy of which is hereto attached, marked Exhibit C, and by reference made a part hereof as though fully incorporated herein.

Thereafter and on, to-wit, May 13, 1957, the complainant in the said cause, John D. Fox, Jr., one of the defendants in this cause, filed an answer to the cross bill, a copy of which said answer is hereto attached, marked Exhibit D, and by reference made a part hereof as though fully incorporated herein.

Thereafter and on, to-wit, May 22, 1957, the said equity court rendered a decree in the said cause, a copy of which is hereto attached, marked Exhibit E, and by reference made a part hereof as though fully incorporated herein.

Thereafter and on, to-wit, July 8, 1957, the complainant and cross respondent in the said cause, John D. Fox, Jr., who is the same person as John D. Fox, Jr., one of the defendants in this suit, filed an appeal to the Supreme Court of Alabama and security for costs of the said appeal, a copy of which is hereto attached, marked Exhibit F, and by reference made a part hereof as though fully incorporated herein.

Thereafter and on, to-wit, September 4, 1957, the said appellant, John D. Fox, Jr., filed an appeal bond in the said equity case, which superseded the said decree of the trial court dated May 22, 1957, with the defendant, The Fidelity and Casualty Company of New York, a corporation, as surety thereon, a copy of which said appeal bond is hereto attached, marked Exhibit G, and by reference made a part hereof as though fully incorporated herein.

Thereafter the Supreme Court of Alabama at its special 1958 term and on, to-wit, September 11, 1958, affirmed the said decree of the trial court (First Division, No. 745, opinion reported 268 Ala. 111). A copy of the Certificate of Affirmance in the said cause is hereto attached, marked Exhibit H, and by reference made a part hereof as though fully incorporated herein. After the said decree of the trial court in the said equity proceeding was affirmed by the Supreme Court of Alabama in the proceeding set out above and on, to-wit, September 23, 1958, the defendants, John D. Fox, Jr., and The Fidelity and Casualty Company of New York, paid the judgment in the said cause, the statutory penalty and costs, amounting to \$1440.62.

The said equity suit and this suit are for the same cause of action. Julius Clarence Webb, who was one of the respondents and the cross complainant in the said equity case, and Julius Clarence Webb, the plaintiff in this suit, is one and the same person. John D. Fox, Jr., the complainant and cross respondent in the said equity suit, and John D. Fox, Jr., the defendant in this suit, is one and the same person. The defendant, The Fidelity and Casualty Company of New York, a corporation, is in privity with the said defendant, John D. Fox, Jr.

WHEREFORE, defendants pray that this suit be abated and that the summons and complaint in it be quashed.

Dated this 3rd day of March, 1960.

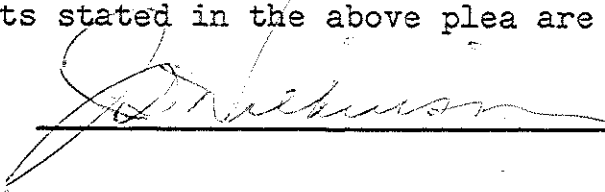
FILED
MAR 24 1960

ALICE J. DUCKY, Clerk

J. T. Blackburn
Attorney for defendants

STATE OF ALABAMA)
*
BALDWIN COUNTY)

Before me, the undersigned authority, within and for said County in said State, personally appeared J. D. Wilkinson, who, after being by me first duly and legally sworn, deposes and says: That he is Mobile Claims Manager of the defendant, The Fidelity and Casualty Company of New York, a corporation; that he is authorized to make this affidavit for and on behalf of the said corporation, and that the facts stated in the above plea are true.



Sworn to and subscribed before me on
this the 3rd day of March, 1960.



Notary Public, Baldwin County, Alabama

EXHIBIT A

STATE OF ALABAMA)
)
COUNTY OF BALDWIN)

IN THE CIRCUIT COURT -- IN EQUITY

TO ANY SHERIFF OF THE STATE OF ALABAMA--GREETING:

You are hereby commanded to summon JULIUS CLARENCE WEBB AND LEILA GLOVER WEBB to appear and plead, answer or demur, within thirty days from the service hereof, to the Bill of Complaint filed in the Circuit Court of Baldwin County, Alabama, in Equity, by JOHN D. FOX, JR., as Complainant, against JULIUS CLARENCE WEBB AND LEILA GLOVER WEBB, as respondents.

Witness my hand this 7th day of June, 1956.

(S) ALICE J. DUCK
REGISTER.

JOHN D. FOX, JR.,)	
Complainant,)	
VS.	)	IN THE CIRCUIT COURT OF
	)	BALDWIN COUNTY, ALABAMA
JULIUS CLARENCE WEBB and	)	IN EQUITY
LEILA GLOVER WEBB,	)	NO. _____
Respondents.)	

TO THE HONORABLE HUBERT M. HALL, JUDGE OF THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA, IN EQUITY SITTING:

Comes now the complainant, JOHN D. FOX, JR., by his Solicitor, and respectfully represents and shows unto your Honor and this Honorable Court as follows:

1.

That your complainant is over the age of twenty-one years and is a bona fide resident citizen of Baldwin County, Alabama. That the respondents are both over the age of twenty-one years and reside at or near Daphne, Alabama, in Baldwin County.

2.

The complainant claims of the respondents Two Thousand Seven Hundred Thirty-six Dollars and Six Cents (\$2736.06) for work and labor done for the respondents by the complainant between, to-wit: the 20th day of September, 1955, and the 18th day of May,

1956, at their request; which sum of money, with the interest thereon, is still due and unpaid.

3.

That on, to-wit: the 20th day of September, 1955, your complainant entered into a written contract with the respondents, a copy of which, Marked Exhibit "A", is attached hereto, and by reference made a part hereof as though fully set out herein, whereby complainant was to build for the respondents a frame dwelling on the following described lot of land in the Town of Daphne, Baldwin County, Alabama, viz:

From the Northwest Corner of Section 20, Township 5 South, Range 2 East, run South along the West line of said Section 20, 265.7 feet to a point; thence run in a Westward Direction 422.4 feet to the Northeast Corner of the Dryer Subdivision; thence continuing Westwardly along the North line of said Subdivision 162 feet to a point, said point being where the extension of the West Line of 6th Street as shown on the said Plat of Dryer Subdivision recorded in Map Book 1, Page 98, of the Records in the Office of the Judge of the Probate Court of Baldwin County, Alabama, would intersect the North line of said Subdivision; thence run in a Southwardly Direction along the extension thereof, and the West Line of 6th Street, 1351 feet to the North line of College Street; thence run Westwardly along the North Line of said College Street 513.33 feet to the place of beginning of the property described herein; thence continue West along College Street 94.66 feet to the East line of a Street sometimes called 4th Street; thence run North along the said East Line of 4th Street 150 feet to a point; thence run Eastwardly and parallel with College Street 94.66 feet to a point; thence run South and parallel with said 4th Street 150 feet to the point of beginning;

at and for a price of Eight Thousand Seven Hundred and Fifty Dollars (\$8,750.00) to be paid on a "work completed in a satisfactory manner"; And complainant avers that he has complied in all respects with the provisions of said contract, but that the said respondents have failed and refused to comply with said contract in that they still owe to complainant a balance on said contract in the amount of Two Thousand Seven Hundred Thirty-six Dollars and Six Cents (\$2736.06), which said amount the said respondents have failed and refused to pay; and complainant avers that said amount became due on, to-wit: the 18th day of May, 1956, which was the date on which complainant completed work of said contract as afore-

said, and that said amount is due and unpaid.

4.

That your complainant was the original contractor for the building of the house referred to above and that, as such, he has filed a statement of lien, a copy of which is attached hereto, marked Exhibit "B", and by reference made a part hereof as though fully set out herein; that said statement of lien was filed for record in the Office of the Judge of Probate of Baldwin County, Alabama, on, to-wit: the 5th day of June, 1956, and that the same is recorded in Book 5 of Exemptions and Liens, at pages 197-198; and that it was filed within six (6) months after the maturity of the entire indebtedness due from the respondents to the complainant and within six (6) months after the last work was done by complainant for the respondents on the house referred to above. That all of the work and labor done on the house referred to above by the complainant was done for the respondents at their request and that said work and labor was done on the house located on the land described in paragraph 3 hereof, in Daphne, Alabama.

PRAYER FOR PROCESS

THE PREMISES CONSIDERED, your Complainant prays that the respondents, JULIUS CLARENCE WEBB AND LEILA GLOVER WEBB, be made party respondents to this his bill of complaint and that, by proper process, they be required to appear and plead, answer or demur to this bill of complaint within the time allowed by law and the practice of this Honorable Court.

PRAYER FOR RELIEF

Complainant prays further that, on a final hearing of this cause, this Honorable Court will make and enter an appropriate Order or Decree ascertaining and fixing the amount due by the respondents, or either of them, to your complainant for and on account of the work done by the complainant for the respondents under the contract referred to above, and will render a decree against the respondents, or either of them, and in favor of the complainant for said amount. Your complainant prays further that this Court will fix and establish a lien on the frame dwelling

house located on and upon the property described in paragraph 3 of this Bill of Complaint to secure the payment of any amount due by the respondents, or either of them, to the complainant, and that if the said amount is not paid within a time to be specified therein by the Court that the above described property be sold to satisfy said lien. The Complainant prays for such other, further, different or general relief as in Equity and good conscience he may be entitled to receive and which will be meet and proper in the premises, and, as in duty bound, he will ever pray, etc.

(S) TELFAIR J. MASHEBURN, JR.
SOLICITOR FOR COMPLAINANT.

EXHIBIT A

STATE OF ALABAMA)
BALDWIN COUNTY)

CONTRACT TO BUILD

THIS AGREEMENT AND CONTRACT, made and entered into on this 20th day of September, 1955, between JULIUS WEBB, hereinafter referred to as the Purchaser and JOHN D. FOX, JR., hereinafter referred to as the Contractor,

WITNESSETH:

The Contractor and Purchaser, in consideration of the covenants herein contained and the sum hereinafter named, agree as follows:

FIRST: The Contractor shall erect and build a dwelling house in a substantial and workmanlike manner on that certain property of the Purchaser in Daphne, Alabama described as that parcel of land owned by the Purchaser in the Dryer tract Section 41, Township 5, Range 2 East in the City of Daphne, Alabama, being a parcel of land 94.66 feet by 150 feet, all in accordance with the description of materials set forth on FHA Form 2005, Case Number 01-505873 and the blueprints agreed to by and between the parties hereto and approved by FHA.

SECOND: The Contractor shall commence the work to be performed under this contract within one week from the date hereof, and shall in respect to the aforesaid work generally comply with the minimum building and other regulations of the Federal Housing Administration.

THIRD: The Contractor shall complete and deliver possession of the said dwelling within a reasonable time unless prevented by strikes, accidents, weather, and other reasonable causes, in which case the Contractor shall have the power to extend the date of possession accordingly.

FOURTH: The Purchaser in consideration of the covenants and agreements herein contained hereby agrees to pay to the Contractor a sum in the amount of Eight Thousand Seven Hundred and

Fifty Dollars (\$8,750.00) to be paid on a "work completed in a satisfactory manner" as follows:

- (a) One-third of total amount on completion of first inspection by FHA Authorities.
- (b) One-third of total amount on completion of second inspection by FHA Authorities.
- (c) Balance of total amount on final FHA inspection and acceptance.

FIFTH: Should the Purchaser fail to obtain a FHA insured loan and the buildings thereon having in all manner complied with and been properly certified by the FHA, then upon rejection of said mortgage loan, the Purchaser shall have fifteen (15) days in which to complete his part of the agreement by means other than a FHA insured mortgage loan.

SIXTH: Should the said Purchaser or the Contractor fail to perform this agreement promptly on their parts and in the manner herein stated, the property specified above will be evaluated at the fair marketable price, less the value of any appurtenances, hereditaments, and tenements thereon, and the Purchaser shall be reimbursed in that amount, and the Purchaser does hereby agree for himself, his heirs and assigns, to convey the said premises to the Contractor by good and sufficient Warranty Deed with full release of all dower interests.

SEVENTH: It is agreed by and between the parties that the title to all building materials brought onto the Purchasers lot for the use in building the said house shall and will remain in the Contractor.

EIGHTH: The above mentioned blueprints and description of materials, together with this agreement constitute the contract and such blueprints and description are as fully a part of this contract as if hereto attached or herein repeated. If there are changes or deviations from the blueprints or description of materials, Purchaser does hereby agree that he will equitably assume the cost and an adjustment of the contract price will be made and the Purchaser does further agree to pay for such additional construction.

NINTH: Before the final payment is made the Contractor shall submit evidence satisfactory to the Purchaser that all pay-rolls, materials and other indebtedness connected with the work are fully paid or will be paid from the final payment.

TENTH: It is further mutually agreed between the parties hereto that the sum to be paid by the Purchaser as stated above does not include any costs for clearing the premises on which the house is to be constructed, any loan procurement or closing costs, landscaping nor construction of a shell driveway and the Purchaser does agree to have the said work done at his own expense and in such a manner as to not delay the completion of construction by the Contractor nor to delay the final inspection heretofore referred to and will generally comply with the minimum regulations of the FHA.

ELEVENTH: The above mentioned specifications of materials and plans together with this agreement constitute the contract and such specifications of materials and plans are as fully a part of this contract as if hereto attached or herein repeated.

IN WITNESS WHEREOF, the parties hereto have executed this agreement in duplicate on the day and year first above written.

/s/ Julius Webb (Seal)
Julius Webb, Purchaser

/s/ John D. Fox, Jr. (Seal)
John D. Fox, Jr.

STATE OF ALABAMA)
BALDWIN COUNTY)

I, the undersigned notary public in and for the state of Alabama at Large, certify that Julius Webb and John D. Fox, Jr., whose names are signed to the foregoing contract and who are known to me, acknowledged before me on this day that, being informed of the contents of the contract, they executed the same voluntarily on the day the same bears date.

Given under my hand this 20th day of September, 1955.

My commission expires 14 July 1958.

SEAL

/s/ Ernest M. Bailey
Notary Public

STATE OF ALABAMA)
)
BALDWIN COUNTY)

THIS AGREEMENT made and entered into this _____ day of September, 1955, by and between JULIUS WEBB, hereinafter referred to as the Purchaser and JOHN D. FOX, JR., hereinafter referred to as the Contractor, WITNESSETH:

That whereas the parties have this day entered into an agreement whereby Contractor is to construct a dwelling house on certain premises named therein and owned by Purchaser, the parties further agree as follows:

That the Contractor will install a 65,000.00 BTU floor furnace in the dwelling to be constructed in lieu of a 50,000.00 BTU furnace.

/s/J.D. Fox (1) Two-radiant wall gas heater in the bathroom and a
Three-radiant wall gas heater in the kitchen.
(1) Ceiling light in dining room.

This agreement is made a part of the referred to contract as if attached or repeated therein.

IN WITNESS WHEREOF, the parties hereto have executed this agreement in duplicate on the day and year first above written.

/s/ Julius Webb (Seal)
Julius Webb, Purchaser

/s/ John D. Fox, Jr. (Seal)
John D. Fox, Jr.

ATTESTED BY:

The prime or original contract referred to above is subject to the approval of Mr. Haas, Merchants National Bank of Mobile.

/s/ Julius Webb

/s/ John D. Fox, Jr.

EXHIBIT B

STATE OF ALABAMA, 0
COUNTY OF BALDWIN. 1

JOHN D. FOX, JR., files this statement in writing, verified by the oath of John D. Fox, Jr., who has personal knowledge of the facts herein set forth:

That the said JOHN D. FOX, JR., claims a lien upon the following property, situated in Daphne, Baldwin County, Alabama, to-wit:

From the Northwest Corner of Section 20, Township 5 South, Range 2 East, run South along the West line of said Section 20, 265.7 feet to a point; thence run in a Westward direction 422.4 feet to the Northeast Corner of the Dryer Subdivision; thence continuing Westwardly along the North Line of said Subdivision 162 feet to a point, said point being where an Extension of the West Line of 6th Street as shown on the said Plat of Dryer Subdivision recorded in Map Book 1 Page 98 of the Records in the Office of the Judge of the Probate Court of Baldwin County, Alabama, would intersect the North line of said Subdivision; thence run in a Southwardly Direction along the extension thereof, and the West Line of 6th Street 1351 feet to the North Line of College Street; thence run Westwardly along the North Line of said College Street 513.33 feet to the place of beginning of the property described herein; thence contine West along College Street 94.66 feet to the East Line of a Street sometimes called 4th Street; thence run North along the said East line of 4th Street 150 to a point; thence run Eastwardly and paralled with College Street 94.66 feet to a point; thence run Southe and parallel with said 4th Street 150 feet to the point of beginning.

This lien is claimed, separately and severally, as to both the buildings and improvements thereon, and the said land.

That said lien is claimed to secure and indebtedness of \$2736.06, with interest from to-wit: the 18th day of May 1956.

That the names of the owners of said property are JULIUS CLARENCE WEBB AND LEILA CLOVER WEBB.

/s/ John D. Fox, Jr.
CLAIMANT.

Before me, T. J. Mashburn, Jr., a Notary Public in and for the County of Baldwin, State of Alabama, personally appeared

JOHN D. FOX, JR., WHO being duly sworn, doth depose and say:
That he has personal knowledge of the facts set forth in the
foregoing statement of lien, and that the same are true and correct
to the best of his knowledge and belief.

/s/ John D. Fox, Jr.
AFFIANT.

Subscribed and sworn to before me on this the 4th day of
June, 1956, by said Affiant.

/s/ T. J. Mashburn, Jr.
Notary Public, Baldwin County, Ala.

EXHIBIT B

JOHN D. FOX, JR.,)	
)	
Complainant,	)	IN THE CIRCUIT COURT OF
VS.)	
	)	BALDWIN COUNTY, ALABAMA
)	
JULIUS CLARENCE WEBB and	)	IN EQUITY. NO. _____
LEILA GLOVER WEBB,)	
)	
Respondents.)	

AMENDMENT

Comes now the Complainant, JOHN D. FOX, JR., by his Solicitor, and amends Paragraph 3 of his Original Bill of Complaint so that, as amended, said paragraph 3 reads as follows:

3.

That on, to-wit; the 20th day of September, 1955, your complainant entered into a written contract with the respondent, JULIUS CLARENCE WEBB, a copy of which contract, marked Exhibit "A", is attached hereto, and, by reference, made a part hereof as though fully set out herein; that the respondent, LEILA GLOVER WEBB, subsequently, ratified, confirmed and adopted the terms and provisions of said written contract; that under the terms and provisions of said contract complainant was to build for the respondents a frame dwelling on the following described lot of land in the Town of Daphne, Baldwin County, Alabama, viz:

From the Northwest corner of Section 20, Township 5 South, Range 2 East, run South along the West line of said Section 20, 265.7 feet to a point; thence run in a Westward Direction 422.4 feet to the Northeast Corner of the Dryer Subdivision; thence continuing Westwardly along the North Line of said Subdivision 162 feet to a point, said point being where the extension of the West Line of 6th Street as shown on the said Plat of Dryer Subdivision recorded in Map Book 1, page 98, of the records in the Office of the Judge of the Probate Court of Baldwin County, Alabama, would intersect the North Line of said Subdivision; thence run in a Southwardly Direction along the extension thereof, and the West Line of 6th Street, 1351 feet to the North Line of College Street; thence run Westwardly along the North Line of said College Street 513.33 feet to the place of beginning of the property described herein; thence continue West along College Street 94.66 feet to the East Line of a Street sometimes called 4th Street; thence run North along the said East Line of 4th Street 150 feet to a point; thence run Eastwardly and parallel with College Street 94.66 feet to a point; thence run South and parallel with said 4th Street 150 feet to the point of beginning;

at and for a price of Eight Thousand Seven Hundred and Fifty (\$8,750.00) Dollars, to be paid on a "Work completed in a satisfactory manner" basis; and complainant avers that he has complied in all respects with the provisions of said contract, but that the said respondents have failed and refused to comply with said contract in that they still owe to complainant a balance on said contract in the amount of Two Thousand Seven Hundred Thirty-six and Six One-hundredths (\$2,736.06) Dollars, which said amount the said respondents have failed and refused to pay; and complainant avers that said amount became due on, to-wit: the 18th day of May, 1956, which was the date on which complainant completed work on said contract as aforesaid, and that said amount, with the interest thereon, is still due and unpaid.

(S) TELFAIR J. MASHBURN, JR.
Solicitor for Complainant.

EXHIBIT C

JOHN D. FOX, JR.,)			
	Complainant,	)		IN THE CIRCUIT COURT OF
vs.		)		BALDWIN COUNTY, ALABAMA
JULIUS C. WEBB, ET AL.,	)		IN EQUITY	NO. 3807
	Respondents.)		

Come now the Respondents, each separately and severally, in the above styled cause, by their Solicitors, and for answer to the Bill of Complaint heretofore filed against them, say as follows:

1. The Respondents admit the allegations of paragraph "1" of the Bill of Complaint.
2. The Respondents deny the allegations of paragraph "2" of the Bill of Complaint.
3. The Respondents admit that the Complainant entered into a written contract with the Respondent, Julius Clarence Webb, on September 20, 1955, and that a copy of such contract is attached to the Bill of Complaint. Respondents deny that the Respondent Leila Glover Webb subsequently ratified, confirmed and adopted the terms and provisions of said written contract and they further deny that under the terms and provisions thereof the Complainant was to build a frame dwelling house for the Respondents. The Respondent Julius C. Webb further denies that the Complainant has complied in all respects with the provisions of said contract but, on the contrary, the Complainant breached said contract in that he failed to construct said frame dwelling in a good and workmanlike manner or in accordance with the plans and specifications for the construction thereof and as a result of said breach the Respondent, Julius C. Webb has been caused to suffer and did suffer damages in the amount of Four Thousand Six Hundred Dollars (\$4,600.00) said sum being the amount necessary to expend on said frame dwelling in order that the same, when completed, would comply in all respects with the terms and provisions of said contract. The Respondents deny each and every other allegation of said paragraph and demand strict proof thereof.

4. The Respondents deny the allegations of paragraph "4" of the Bill of Complaint and demand strict proof thereof.

For further answer to the Bill of Complaint the Respondent Julius C. Webb alleges that the Complainant John D. Fox, Jr., breached the contract, a copy of which is attached to the Bill of Complaint and marked "Exhibit A" and by reference made a part thereof in that he failed to erect and build said dwelling house in a substantial and workmanlike manner and in accordance with the description of materials therein referred to and the blueprints agreed to by and between the parties thereto and as a result of said breach of said contract the Respondent Julius C. Webb was damaged in the amount of Four Thousand Six Hundred Dollars (\$4,600.00) in that said sum would be required to complete said dwelling in a substantial and workmanlike manner and in accordance with the contract referred to above. And the Respondent Julius C. Webb further alleges that he has made repeated demands upon the Complainant to complete said dwelling in accordance with his contract but that he has failed and refused and continues to fail and refuse to do so, all to the damage of the Respondent Julius C. Webb.

The Respondent Julius C. Webb further alleges that in and by the terms of the contract hereinabove referred to that he has paid to the Complainant Six Thousand One Hundred and Sixty-five Dollars (\$6,165.00) but that he has not paid the remainder of Two Thousand Five Hundred Eighty-five Dollars (\$2,585.00) because of the abandonment by the Complainant of the contract and his obligations thereunder and his failure to complete said dwelling house in accordance with said contract.

WHEREFORE, the premises considered the Respondent Julius C. Webb respectfully prays that his answer be taken as a cross-bill against the Complainant John D. Fox, Jr., and that upon a final hearing of this cause that a judgment be rendered against the said Complainant for and in the amount of Four Thousand Six Hundred Dollars (\$4,600.00) as damages aforesaid for the breach by the Complainant of said contract. And the Respondent Julius C.

Webb prays for such other, further and different relief to which,
in equity, he might be entitled.

Respectfully submitted,

W. C. MACMAHON III
and
CHASON & STONE

By: (S) NORBORNE C. STONE, JR.
Solicitors for Respondent

EXHIBIT D

JOHN D. FOX, JR.,)	
Complainant,	)	IN THE CIRCUIT COURT OF
VS.	)	BALDWIN COUNTY, ALABAMA
JULIUS C. WEBB, ET AL.,	)	IN EQUITY NO. 3807
Respondents.)	

ANSWER TO CROSS-BILL

Comes the complainant, JOHN D. FOX, JR., and, for answer to the cross-bill heretofore filed in this cause, says:

1. That he admits that the complainants have paid him Six Thousand One Hundred Sixty-five and No/100ths (\$6,165.00) Dollars on the contract in this cause.

2. That he denies each and every other allegation of said cross-bill and demands strict proof thereof.

(S) TELFAIR J. MASHBURN, JR.
SOLICITOR FOR COMPLAINANT.

EXHIBIT E

JOHN D. FOX, JR.,)	
Complainant,	)	IN THE CIRCUIT COURT OF
VS.	)	BALDWIN COUNTY, ALABAMA
JULIUS CLARENCE WEBB and	)	IN EQUITY NO. 3807
LEILA GLOVER WEBB,)	
Respondents.)	

FINAL DECREE

This cause coming on to be heard was submitted upon the original and amended bill of complaint, answer and cross bill, answer to cross bill, and testimony of the witnesses both for the Complainant and the Respondent, taken ore tenus, and testimony of John W. Craig, taken in accordance with stipulation entered into by and between the Solicitors for the respective parties.

The Court, after considering all of the pleadings and the testimony of the witnesses finds as follows:

That on September 20, 1955, the Complainant and the Respondent, Julius Clarence Webb, entered into a contract to build, in which it was stipulated that "the contractor shall erect and build a dwelling house in a substantial and work-man-like manner on that certain property of the Respondent, in Daphne, Alabama-----".

The Complainant, John D. Fox, Jr., was the contractor, and the Respondent, Julius Clarence Webb, the purchaser.

The Complainant by his pleading attempts to establish the fact that Leila Glover Webb, while not a party of the written contract, ratified the same by her conduct and should be held liable thereunder.

There is no evidence sufficient to connect the Respondent, Leila Glover Webb, with the contract, and she is not bound by the terms thereof.

The Complainant, in an effort to comply with the contract, went upon the property and constructed thereon a building, however, before beginning the operation and during the progress thereof, it became necessary that he spend ONE HUNDRED FORTY-SEVEN AND 90/100 (\$147.90) DOLLARS on work not included in the contract, and is entitled to be paid therefor.

There is much effort on the part of the Complainant to establish the fact that he has complied with all of the terms and conditions of the contract, however, it is conclusively shown that the building was not constructed in a substantial and work-man-like manner.

The original contract price was EIGHT THOUSAND SEVEN HUNDRED FIFTY AND NO/100 (\$8,750.00) DOLLARS, to be paid on the work completed in a satisfactory manner, and in addition thereto Complainant is entitled to ONE HUNDRED FORTY-SEVEN AND 90/100 (\$147.90) DOLLARS for extra work, which would have made a total due the Complainant upon the completion of the building in a substantial and work-man-like manner of EIGHT THOUSAND, EIGHT HUNDRED NINETY-SEVEN AND 90/100 (\$8,897.90) DOLLARS.

The complainant has not completed the work in accordance with the terms and conditions of the contract.

The amount necessary to complete the building in accordance with the terms and conditions of the contract is THREE THOUSAND AND THREE HUNDRED FORTY-NINE (\$3,349.00) DOLLARS, (as testified to by Cecil Nall) and the additional sum, not included in Nall's estimate, of FOUR HUNDRED FORTY-NINE AND 54/100 (\$449.54) DOLLARS paid by the Respondent and Cross Complainant, Julius Clarence Webb, for additional work to complete the building, making a total necessary to complete the building in accordance with the terms and conditions of the contract of THREE THOUSAND SEVEN HUNDRED NINETY-EIGHT AND 54/100 (\$3,798.54) DOLLARS.

The Respondent and Cross Complainant, James Clarence Webb, has, according to the record, paid the Complainant and Cross Respondent SIX THOUSAND ONE HUNDRED SEVENTY-ONE AND 50/100 (\$6,171.50) DOLLARS, which, together with the amount necessary to complete the building in accordance with the terms and conditions of the contract of THREE THOUSAND SEVEN HUNDRED NINETY-EIGHT AND 54/100 (\$3,798.54) DOLLARS, making a total of NINE THOUSAND, NINE HUNDRED SEVENTY AND 40/100 (\$9,970.40) DOLLARS.

The Court is of the opinion that the Complainant and

Cross Respondent, John D. Fox, Jr., is indebted to the Respondent and Cross Complainant, Julius Clarence Webb, in the sum of ONE THOUSAND SEVENTY-TWO AND 14/100 (1,072.14) DOLLARS.

The Court is of the further opinion that the Complainant and Cross Respondent is not entitled to the relief prayed for in his bill of complaint. It is

THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that the complaint, on behalf of the Complainant and Cross Respondent, John D. Fox, Jr., be, and the same is dismissed.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the Respondent and Cross Complainant, Julius Clarence Webb, have and recover of the Complainant and Cross Respondent, John D. Fox, Jr., the sum of ONE THOUSAND SEVENTY-TWO AND 14/100 (\$1,072.14) DOLLARS.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED by the Court that the Complainant and Cross Respondent, John D. Fox, Jr., pay the cost herein, for which execution may issue.

Dated this 22nd day of May, 1957.

(S) HUBERT M. HALL
JUDGE

EXHIBIT F

JOHN D. FOX, JR.,
Complainant,

JULIUS CLARENCE WEBB and
LEILA GLOVER WEBB,
Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN EQUITY. NO. 3807

Comes now JOHN D. FOX, JR., Complainant and Cross-respondent in the above styled cause, and hereby appeals to the Supreme Court of Alabama from the final decree and judgment in the Circuit Court of Baldwin County, Alabama, in Equity, rendered in the above styled cause on the 22nd day of May, 1957.

(S) TELFAIR J. MASHEURN, JR.

SOLICITOR FOR COMPLAINANT AND CROSS-RESPONDENT.

We hereby acknowledge ourselves securities for costs of the foregoing appeal.

(S) JOHN D. FOX, JR.

PRINCIPAL

(S) TELFAIR J. MASHBURN, JR.

SURETY

Taken and approved this 8th day of ^{July}~~June~~, 1957.

(S) ALICE J. DUCK

REGISTER

EXHIBIT G

JOHN D. FOX, JR.,
Complainant,
VS.
JULIUS CLARENCE WEBB and
LEILA GLOVER WEBB,
Respondents.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
IN EQUITY NO. 3807

SUPERSEDEAS BOND

STATE OF ALABAMA)
BALDWIN COUNTY)

KNOW ALL MEN BY THESE PRESENTS: That we, John D. Fox, Jr., as Principal, and The Fidelity and Casualty Company of New York, a corporation, as Surety, are held and firmly bound unto Julius Clarence Webb in the sum of Twenty-two Hundred Fifty Dollars (\$2250.00), for the payment of which well and truly to be made the Principal binds himself, his heirs and assigns, and the Surety binds itself, its successors and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 29 day of August,
1957.

The condition of the above obligation is such that, Whereas, Julius Clarence Webb obtained a decree in the above styled cause in the Circuit Court of Baldwin County, Alabama, Equity Side, on the 22nd day of May, 1957, from which judgment the said complainant, John D. Fox, Jr., has obtained and appeal, returnable to the next term of the Supreme Court of Alabama:

NOW, THEREFORE, if the complainant, John D. Fox, Jr., shall prosecute the said appeal to effect and satisfy such decree as may be rendered against him in this said cause by the Supreme Court of Alabama, then this obligation to be void, otherwise to remain in full force and effect.

(S) JOHN D. FOX, JR. (SEAL)
As Principal

THE FIDELITY AND CASUALTY COMPANY OF
NEW YORK, a corporation (SEAL)

By (S) J. D. WILKINSON
As its Attorney in Fact
As Surety.

SEAL

Taken and approved on this the
4th day of Sept., 1957.

(S) ALICE J. DUCK

As Register of the Circuit Court of
Baldwin County, Alabama, in Equity.

NO. 3807

THE SUPREME COURT OF ALABAMA

Whereas, the Record and Proceedings of the CIRCUIT Court
IN EQUITY of said county, in a certain cause lately pending in
said Court between

JULIUS CLARENCE WEBB:
LEILA GLOVER WEBB, Appellees.

NOW, IT IS HEREBY CERTIFIED, That it was thereupon considered, ordered, adjudged, and decreed by our Supreme Court, on the 11th day of September, 1958, that said DECREE of said CIRCUIT Court be in all things affirmed, and that it was further considered, ordered, adjudged, and decreed that the appellant, John D. Fox, Jr., and The Fidelity and Casualty Company of New York, surety on the supersedeas bond, pay the amount of the monied decree of the Circuit Court, In Equity, and ten per centum (10%) damages thereon, and interest, and the costs accruing on said appeal in this Court and in the Court below, for which costs let execution issue.

/s/ J. Render Thomas
Clerk of the Supreme Court of Alabama.

WILLIAM E. DUCK, Clerk

THE FIDELITY & CASUALTY
COMPANY OF NEW YORK, A
CORPORATION,

Plaintiff,

vs.

JULIUS W. WRIGHT,

Defendant.

X

X

X

X

X

X

X

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

ORDER REVIVING JUDGMENT

This day came the Plaintiff in the above styled cause, by its attorneys, and the Defendant, being called and notified as required by law, came not; and it appearing to the Court that on March 2, 1949, a judgment was rendered in favor of the Plaintiff and against the Defendant in the sum of One Thousand Three Hundred Eighty-four Dollars and Ninety-eight Cents (\$1,384.98) and the additional sum of Eleven Dollars and Twenty-five Cents (\$11.25), cost of court; and it further appearing to the Court that said judgment has not been paid and the same remains unsatisfied and that the Plaintiff did file its petition to revive such judgment; and the Court having considered all of the above, is of the opinion that said judgment should be revived so that execution may issue thereon; it is, therefore

ORDERED, ADJUDGED and DECREED by the Circuit Court of Baldwin County, Alabama, that the motion of The Fidelity & Casualty Company of New York, a Corporation, to revive that certain judgment rendered in its favor against Julius W. Wright by this Court on March 2, 1949, be, and the same hereby is granted, and that said judgment be, and the same is hereby revived in the name of The Fidelity & Casualty Company of New York, a Corporation, the Plaintiff in said cause, and against Julius W. Wright, the Defendant in said cause, for the sum of One Thousand Three Hundred Eighty-four Dollars and Ninety-eight Cents (\$1,384.98) together with interest thereon from the date of such judgment and together with the cost in this behalf expended, and for all of which let execution issue.

Done this the 20 day of October, 1959.

FILED

OCT 23 1959

ALICE J. DUCK, Clerk

Hubert M. [Signature]
Circuit Judge

CHASON & STONE
LAW OFFICES
BAY MINETTE, ALABAMA

FILED
OCT 23 1959
ALICE J. DUCK, Clerk

ORDER REVIVING JUDGMENT

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW

THE FIDELITY & CASUALTY COMPANY
OF NEW YORK, A CORPORATION,
Plaintiff,
vs.
JULIUS W. WRIGHT,
Defendant,

[Handwritten signature]

JULIUS C. WEBB,

VS.

Plaintiff,

THE FIDELITY AND CASUALTY
COMPANY OF NEW YORK, a cor-
poration, and JOHN D. FOX,
JR.,

Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW NO. 3038

DEMURRER TO AMENDED COMPLAINT

Now come the defendants, each separately and severally, and demur to the complaint as last amended and to each and every count thereof, separately and severally, and as grounds of such demurrer assign, separately and severally, the following:

1. It does not state a cause of action.

2. No facts are alleged on which the relief sought can be granted.

3. No facts are alleged to show that the contract between the plaintiff and the defendant, Fox, which is referred to in the amended complaint, obligated the defendant, Fox, to pay the attorney's fees, which are claimed in the amended complaint.

4. No facts are alleged to show that the defendant, Fox, agreed in the written contract with the plaintiff, Webb, which is referred to in the amended complaint, to pay attorney's fees, which are claimed in the complaint.

5. No facts are alleged to show that the written agreement between the plaintiff and the defendant, Fox, which is referred to in the amended complaint, required the said defendant to pay the various items of damages which are claimed in the amended complaint.

6. It affirmatively appears from the amended complaint that the written contract between the plaintiff and the defendant, Fox, which is referred to in the complaint, contained no provision requiring the defendants, or either of them, to pay the attorney's fees and other items of damages, which are claimed in the amended complaint.

7. It affirmatively appears from the amended complaint

that the written contract between the plaintiff and the defendant, Fox, which is referred to in the complaint, contained no provision requiring the defendants, or either of them, to pay the attorney's fees, which are claimed in the amended complaint.

8. It affirmatively appears from the amended complaint that the written contract between the plaintiff and the defendant, Fox, which is referred to in the complaint, contained no provision requiring the defendants, or either of them, to pay the various items of damages which are set out in the amended complaint.

9. No facts are alleged to show when the attorney's fees, which are claimed in the amended complaint, were paid.

10. No facts are alleged to show that the defendant, Fox, has failed to comply with the terms and provisions of the alleged written contract with the plaintiff.

11. The allegations of the complaint are conclusions of the pleader.

12. The allegations of the complaint are conclusions of the pleader and no facts are alleged to show that the defendants, or either of them, are liable to the plaintiff on the alleged bond.

13. No facts are alleged to show any duty to or owing the plaintiff by the defendants, or either of them.

14. No facts are alleged to show that the damages claimed are covered by the bond referred to in the complaint.

15. No facts are alleged to show that the alleged written agreement required the defendants, or either of them, to pay the damages claimed.

16. It affirmatively appears from the amended complaint that the issues involved in this action have already been adjudicated in the suit which is described in the amended complaint.

17. It affirmatively appears that the damages claimed in the amended complaint exceed the amount of the defendants' liability under the bond on which this suit is brought.

18. It affirmatively appears that the damages claimed in the amended complaint are the result of delay in finishing the

contract which is made a part of the amended complaint, and no facts are alleged to show that the defendant, The Fidelity and Casualty Company of New York, a corporation, is liable for any of the said damages which exceed \$875.00.

19. It affirmatively appears that the damages claimed for delay in finishing the contract set out in the amended complaint exceed the defendants' liability under the bond which is made a part of the amended complaint.

20. It affirmatively appears from the amended complaint that the liability of the defendant, The Fidelity and Casualty Company of New York, a corporation, under the bond described in the amended complaint does not exceed ten percent (10%) of the amount thereof, or \$875.00.

21. The allegations of the amended complaint are vague, indefinite and uncertain in that no facts are alleged to show when the various items of damages set out in the amended complaint were paid by the plaintiff, or when they became due.

22. The allegations of the amended complaint are conclusions of the pleader and no facts are alleged to show when the various items of damages set out in the amended complaint were paid by the plaintiff, or when they became due.

23. For aught that appears in the amended complaint each item of damages claimed therein had been paid by the plaintiff or were due when the final decree was rendered in the case of Fox vs. Webb, which is described in the amended complaint.

24. The allegations of the amended complaint are conclusions of the pleader and no facts are alleged to show that each item of damages claimed in the amended complaint is due under the contract and bond which are made a part of the amended complaint.

25. No facts are alleged to show that the issues involved in this suit were not litigated or could not have been litigated in the case of Fox vs. Webb, which is described in the amended complaint.

26. It affirmatively appears that the plaintiff is now

estopped to prosecute this action.

FILED

SEP 12 1959

ALICE J. DUCK, CLERK
REGISTERED

J. B. Blackburn
Attorney for defendants

DEMURRER TO AMENDED COMPLAINT

JULIUS C. WEBB,

Plaintiff,

VS.

THE FIDELITY AND CASUALTY COMPANY
OF NEW YORK, a corporation, and
JOHN D. FOX, JR.,

Defendants.

38

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW NO. 3038

FILED
SEP 12 1959
ALICE J. DICK, CLERK
REGISTER

J. B. BLACKBURN
ATTORNEY AT LAW
BAY MINETTE, ALABAMA

JULIUS C. WEBB,)	
)	
Plaintiff,)	
VS.	)	IN THE CIRCUIT COURT OF
	)	BALDWIN COUNTY, ALABAMA
THE FIDELITY AND CASUALTY)	
COMPANY OF NEW YORK, a	)	AT LAW
corporation, and JOHN D.	)	NO. 3038
FOX, JR.,)	
)	
Defendants.)	

DEMURRER

Now come the defendants, each separately and severally, and for demurrer to the complaint assign, separately and severally, the following:

1. It does not state a cause of action.
2. The alleged written agreement between the plaintiff and the defendant, John D. Fox, Jr., is not set out in or made a part of the complaint.
3. No facts are alleged to show the legal effect of the alleged written agreement between the plaintiff and the defendant, John D. Fox, Jr.
4. No facts are alleged to show that the defendant, John D. Fox, Jr., has failed to comply with the terms and provisions of the alleged written agreement with the plaintiff.
5. No facts are alleged to show any duty to or owing the plaintiff by the defendant, John D. Fox, Jr.
6. No facts are alleged to show that the defendant, John D. Fox, Jr., has breached any duty to the plaintiff.
7. No facts are alleged to show how or in what way the defendant, John D. Fox, Jr., has failed to comply with his alleged written agreement with the plaintiff.
8. No facts are alleged to show that the plaintiff's alleged losses were caused by the defendant, John D. Fox, Jr.
9. No facts are alleged to show what loss or losses were sustained by the plaintiff.
10. The allegations of the complaint are conclusions of the pleader.

11. The allegations of the complaint are conclusions of the pleader and no facts are alleged to show that the defendants or either of them are liable to the plaintiff on the alleged bond.

12. The alleged bond is not set out in or made a part of the complaint.

13. No facts are alleged to show the legal effect of the alleged bond.

14. No facts are alleged to show the condition of the alleged bond.

15. No facts are alleged to show how the condition of the alleged bond was broken.

16. No facts are alleged to show when the condition of the alleged bond was broken.

17. No facts are alleged to show any obligation of the defendants or either of them on the alleged bond.

J. B. Blackburn

Attorney for defendants.

FILED
NOV 27 1956
ALICE J. DUCK, Clerk

DEMURRER

JULIUS C. WEBB,

Plaintiff,

VS.

THE FIDELITY AND CASUALTY COMPANY
OF NEW YORK, a corporation, and
JOHN D. FOX, JR.,

Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW NO. 3038

J. B. BLACKBURN
ATTORNEY AT LAW
BAY MINETTE, ALABAMA

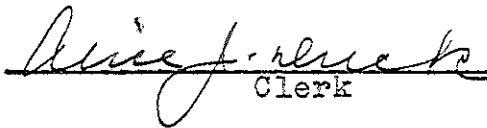
STATE OF ALABAMA
BALDWIN COUNTY

IN THE CIRCUIT COURT - LAW SIDE

TO ANY SHERIFF OF THE STATE OF ALABAMA:

You are hereby commanded to summon The Fidelity & Casualty Company of New York, a corporation, and John D. Fox, Jr., to appear within thirty days from the service of this Writ in the Circuit Court to be held for said County at the place of holding same, then and there to answer the complaint of Julius C. Webb.

Witness my hand this 20 day of September, 1956.


Clerk

EX-10-23-56 & 10-30-56

JULIUS C. WEBB,

Plaintiff,

vs.

THE FIDELITY & CASUALTY COMPANY
OF NEW YORK, a corporation, and
JOHN D. FOX, JR.,

Defendants.

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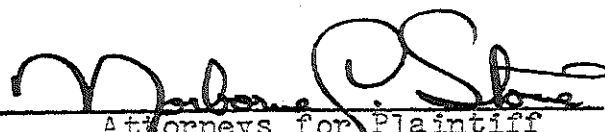
IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW

COUNT ONE:

The Plaintiff claims from the Defendants Four Thousand Six Hundred Dollars (\$4,600.00) for the breach of the condition of a bond made by the Defendants on the 30th day of September, 1955, payable to the Plaintiff in the sum of Eight Thousand Seven Hundred Fifty Dollars (\$8,750.00) with condition that if the Defendant, John D. Fox, Jr., would indemnify the Plaintiff for all loss that he might sustain by reason of the said Defendant's failure to comply with any of the terms of a written contract for the construction of a private dwelling for the Plaintiff dated September 20, 1955. And the Plaintiff says the condition of the said bond has been broken by the said Defendant in this: that the Defendant, John D. Fox, Jr., has not indemnified the Plaintiff for all losses that he has sustained by reason of said Defendant's failure to comply with the terms of said

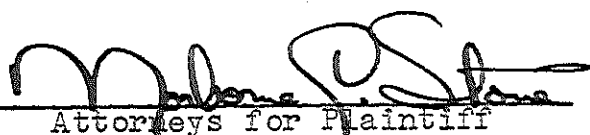
contract in that he failed to complete the dwelling house in a substantial and workmanlike manner and in accordance with the plans and specifications which were attached to and made a part of said contract and he has failed and refused to fix and repair all of the numerous errors and omissions even though both he and the Defendant, The Fidelity & Casualty Company of New York, a corporation, has been requested on numerous occasions to do so; to the damage of the Plaintiff, as above stated.

CHASON & STONE

By: 
Attorneys for Plaintiff

The Plaintiff demands a trial of this cause by jury.

CHASON & STONE

By: 
Attorneys for Plaintiff

1394

no. 3038

Received 20 day of Sept 1956
and on 23 day of Oct 1956
I served a copy of the within 89C
on John D. Fox, Jr.

By service on _____
TAYLOR WILKINS, Sheriff
By Elling Stedman D. S.

Sheriff claims 20 miles at
Ten Cents per mile Total \$ 2.00
TAYLOR WILKINS, Sheriff

BY DEPUTY SHERIFF
Fairhope Ala

EXECUTED BY SERVING A
COPY OF THE WITHIN

Quincy B. Boring
Asst. for M. D. Don
C. Morris mgt.
The Fidelity & Casualty Co.
of New York, a corp.
10-30-56

RECEIVED IN OFFICE
M. S. Butler
() Sheriff Mon 06 the 29 day of Sept
By Ramsey
D. S. BUTLER, Sheriff
Deputy Sheriff

JULIUS C. WEBB,
Plaintiff,
vs.
THE FIDELITY & CASUALTY COMPANY
OF NEW YORK, a corporation,
and JOHN D. FOX, JR.,
Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW

17 motion fr.
SUMMONS AND COMPLAINT

FILED
SEP 20 1956
ALICE J. DUCK, Reluct
LAW OFFICES
CHASON & STONE
BAY MINETTE, ALABAMA
M. S. Butler, Sheriff
Montgomery County, Ala.
James H. Stone, Jr.
of S. Butler, Sheriff
Montgomery County, Ala.
James H. Stone, Jr.
of S. Butler, Sheriff
Montgomery County, Ala.

JULIUS C. WEBB,

Plaintiff,

vs.

THE FIDELITY AND CASUALTY
COMPANY OF NEW YORK, a cor-
poration, and JOHN D. FOX,
JR.,

Defendants.

X

X

X

X

X

X

X

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

NO. 3038

Comes now the Plaintiff in the above styled cause, by his attorneys, and amends his complaint so that the same shall read as follows:

COUNT ONE:

The Plaintiff claims of the Defendants Two Thousand Six Hundred and Forty-six and 66/100 Dollars (\$2,646.66) for the breach of the condition of a bond, a copy of which is attached to the original complaint and marked "Exhibit A" and by reference made a part hereof as though fully incorporated herein, made by the Defendants on the 30th day of September, 1955, payable to the Plaintiff in the sum of Eight Thousand Seven Hundred and Fifty Dollars (\$8,750.00) with the condition that the Defendant, John D. Fox, Jr., would indemnify the Plaintiff for all loss that he might sustain by reason of the said Defendant's failure to comply with any of the terms of a written contract for the construction of a private dwelling located at 513 N/S College Avenue, Daphne, Alabama, (hereinafter referred to as the "construction contract") which said construction contract was dated September 20, 1955, and a copy of which is attached to the original complaint and marked "Exhibit B" and by reference made a part hereof as though fully incorporated herein. And the Plaintiff alleges that the condition of the said bond has been broken by the Defendant, John D. Fox, Jr., in this: that the Defendant, John D. Fox, Jr., has not indemnified the Plaintiff for all losses that he has sustained by reason of the failure of the Defendant, John D. Fox, Jr., to comply with the terms of the construction contract hereinabove referred to. And the Plaintiff further alleges that the Defendant John D. Fox, Jr., failed to comply with the terms of said construction contract in that he failed to construct said dwelling house in

a substantial and workmanlike manner or in accordance with the plans, blueprints and specifications and he failed to complete said dwelling within the time agreed upon, and as a proximate result of the breach by the Defendant, John D. Fox, Jr., aforesaid, the Plaintiff suffered damages in this: he was required to pay Two Hundred Thirty-four and 79/100 Dollars (\$234.79) more to the Merchants National Bank of Mobile, Alabama, than he would have paid had the said construction contract been completed in accordance with the plans and specifications and within the time agreed upon, said amount representing the difference in the rate of interest on a construction loan by said bank to the Plaintiff at six percent (6%) and the rate of interest, four and one-half percent ($4\frac{1}{2}\%$), prevailing on F. H. A. loans in January, 1956 (the completion date of said construction contract) from January, 1956, to October, 1958 (the date when the Plaintiff was able to close his loan). One Thousand One Hundred and Twenty-one and 26/100 Dollars (\$1,121.26) being the additional interest ($4\frac{1}{2}\%$ as compared to $5\frac{1}{4}\%$) which it will be necessary that the Plaintiff pay on the F. H. A. mortgage and note on the dwelling house due to an increase in F. H. A. interest rates from $4\frac{1}{2}\%$ to $5\frac{1}{4}\%$ prior to the closing of the loan of the Plaintiff on said dwelling house and subsequent to the date on which the loan could have been closed had the contract hereinabove referred to been completed in January, 1959, the date agreed upon for the completion thereof; Two Hundred Dollars (\$200.00) as the reasonable rental value of said property from, to-wit: January, 1956 (the completion date of said contract) through, to-wit: April, 1956 (the date of which the Plaintiff moved into said dwelling house); Sixty Dollars (\$60.00) as the cost to the Plaintiff of securing three (3) commitment renewals from the F. H. A.; Thirty-five Dollars (\$35.00) as the cost of seven (7) additional inspections by the F. H. A; One Thousand Ten and 61/100 Dollars (\$1,010.61) as reasonable attorney's fee paid to W. O. MacMahon, III, and Chason & Stone, Attorneys at Law, for services rendered by them for and on behalf of the Plaintiff in regard to the defense of that certain cause in the Circuit Court of Baldwin County, Alabama, In Equity, numbered 3807, wherein John D. Fox, Jr., was the Complainant and Cross-Respondent and the Plaintiff was the Respondent and Cross-Complainant and in the prosecution of the counter claim of the Plain-

tiff in said cause, all in the total amount of Two Thousand Six Hundred Forty-six and 66/100 Dollars (\$2,646.66), together with interest thereon from, to-wit: October, 1958. Wherefore Plaintiff brings this suit and asks judgment in the above amount.

COUNT TWO

The Plaintiff claims of the Defendants Two Thousand Six Hundred and Forty-six and 66/100 Dollars (\$2,646.66) for the breach of the condition of a bond made by the Defendants on the 30th day of September, 1955, payable to the Plaintiff, in the sum of Eight Thousand Seven Hundred and Fifty Dollars (\$8,750.00) with the condition that the Defendant, John D. Fox, Jr., would indemnify the Plaintiff for all loss that he might sustain by reason of the said Defendant's (John D. Fox, Jr.) failure to comply with any of the terms of a written contract for the construction of a private dwelling located at 513 N/S College Avenue, Daphne, Alabama, which construction contract was dated September 20, 1955. And the Plaintiff says the condition of said bond has been broken by the Defendants in this: First, the Defendants have failed to pay to the Plaintiff the sum of Two Hundred and Thirty-four and 79/100 Dollars (\$234.79) as excess interest which the Plaintiff had to pay to the Merchants National Bank of Mobile, Alabama, on the construction loan secured by him from that institution covering the period of time from January, 1956 (the contract completion date) to October, 1958 (the date when the Plaintiff was first able to secure an F. H. A. loan), said construction loan being made at the rate of interest of six percent (6%) as compared to the rate of four and one-half percent ($4\frac{1}{2}\%$) which the Plaintiff would have been required to pay had his dwelling house been constructed in accordance with the contract referred to above and completed on the date referred to above; Second, the Defendants have failed to pay to the Plaintiff the sum of One Thousand One Hundred Twenty-one and 26/100 Dollars (\$1,121.26), the damage which the Plaintiff sustained by reason of the breach of the Defendant, John D. Fox, Jr., of the contract hereinabove referred to by having to enter into a loan agreement and execute a promissory note to secure the F. H. A. mortgage on his home at an interest rate of $5\frac{1}{4}\%$ as compared to an interest

rate of $4\frac{1}{2}\%$, which latter interest was the prevailing interest rate at the time said dwelling house should have been completed in accordance with said contract, said interest rates having been increased to $5\frac{1}{4}\%$ prior to the time that the Plaintiff was able to close this loan on his said dwelling house, his failure to be able to do so being a result of the breach by the Defendant John D. Fox, Jr., of said construction contract; Third, the Defendants have failed to pay to the Plaintiff the sum of Two Hundred Dollars (\$200.00) as damages which he sustained by reason of not being able to occupy his dwelling house for the period of time from, to-wit: January, 1956, (the completion date of said construction contract) through, to-wit: April 1956 (the date on which the Plaintiff moved into said dwelling house) which sum of Two Hundred Dollars (\$200.00) is the reasonable rental value of said property during said period of time; Fourth, the Defendants have failed to pay to the Plaintiff the sum of Sixty Dollars (\$60.00) as damages which he sustained by reason of having to secure three (3) commitment renewals from the Federal Housing Authority at the rate of Twenty Dollars (\$20.00) each by reason of being unable to close a loan on said dwelling house because of the fact that the Defendant, John D. Fox, Jr., had filed a statement of lien in the Probate Court of Baldwin County, Alabama, against said dwelling house and the land upon which the same is situated; Fifth, that the Defendants have failed to pay to the Plaintiff the sum of Thirty-five Dollars (\$35.00) the amount which the Plaintiff was required to pay to secure seven (7) additional inspections from the Federal Housing Authority at the rate of Five Dollars (\$5.00) each; Sixth, that the Defendants have failed to pay to the Plaintiff the sum of One Thousand Ten and 61/100 Dollars (\$1,010.61) as damages which the Plaintiff was required to pay as a reasonable attorney's fee to W. O. MacMahon, III, and Chason & Stone, Attorneys at Law, for services rendered by them for and on behalf of the plaintiff in regard to the defense of that certain cause in the Circuit Court of Baldwin County, Alabama, In Equity, numbered 3807, wherein John D. Fox, Jr., was the Complainant and Cross-Respondent and the Plaintiff was the Respondent and Cross-Complainant and in the prosecution of the counter-claim of the Plaintiff in said suit; all to the damage of the Plaintiff as

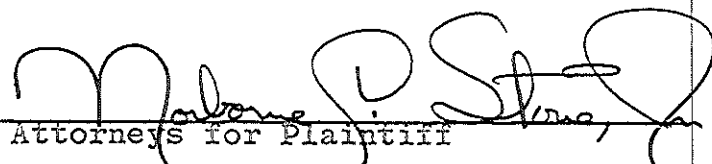
above stated, wherefore he brings this suit and asks judgment in the above amount, together with interest thereon from, to-wit: October, 1958.

W. O. MACMAHON, III

and

CHASON & STONE

By:


Attorneys for Plaintiff

The Plaintiff demands a trial of this cause by jury.

CHASON & STONE


Attorneys for Plaintiff

FILED

SEP 11 1959

ALICE J. DUCK, Clerk

JULIUS C. WEBB,

Plaintiff,

vs.

THE FIDELITY AND CASUALTY COM-
PANY OF NEW YORK, a corporation,
and JOHN D. FOX, JR.,

Defendants

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW NO. 3038

FILED

SEP 11 1959

ALICE J. DUCK, Clerk

LAW OFFICES
CHASON & STONE
BAY MINETTE, ALABAMA

JULIUS C. WEBB,

Plaintiff,

VS.

THE FIDELITY AND CASUALTY
COMPANY OF NEW YORK, a cor-
poration, and JOHN D. FOX,
JR.,

Defendants.

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

AT LAW

NO. 3038

ANSWER

Now come the defendants, each separately and severally, and for answer to the plaintiff's complaint as last amended and to each and every count thereof, separately and severally, assign, separately and severally, the following:

1. The defendants, for answer to the complaint as last amended, saith that the allegations thereof are untrue.

2. The defendants, for answer to the complaint as last amended, saith that they paid the demand for the recovery of which this suit was brought on, to-wit, September 23, 1958, and before the filing of the last amended complaint in this cause.

3. Now come the defendants, each separately and severally, and for answer to the complaint as last amended and to each and every count thereof, separately and severally, saith:

A. That on, to-wit, September 20, 1955, the defendant, John D. Fox, Jr., entered into the written agreement with the plaintiff, Julius Clarence Webb, and the defendant, John D. Fox, Jr., and the plaintiff, Julius Clarence Webb, also entered into the written amendment to the said written contract, which amendment is dated September _____, 1955; the said agreement and the amendment thereto are attached to and made a part of the amended complaint which the plaintiff filed in this cause on, to-wit, February 8, 1957, in which amended complaint the two said instruments are referred to and identified as Exhibit B thereto. The defendant, John D. Fox, Jr., as Principal, and the defendant, The Fidelity and Casualty Company of New York, a corporation, as Surety, gave the bond on which this suit was brought to the plaintiff on, to-wit, September 30, 1955, a copy of which bond is attached to the plaintiff's amended complaint which was filed in this cause on, to-wit,

February 8, 1957, where it is identified and referred to as Exhibit A thereto.

B. On, to-wit, June 7, 1956, the defendant, John D. Fox, Jr., filed a bill of complaint in the Circuit Court of Baldwin County, Alabama, in Equity, against Julius Clarence Webb, the plaintiff in this suit, and Leila Glover Webb, to enforce a mechanic's and materialman's lien on the property and improvements described in the said contract between the plaintiff, Julius Clarence Webb, and the defendant, John D. Fox, Jr., dated September 20, 1955, and the amendment thereto dated September _____, 1955, which are referred to above, as will appear from the copy of the bill of complaint which was filed in the said equity case, a copy of which is attached to the plea in abatement which was filed in this cause on March 4, 1960, where it was marked and identified as Exhibit A thereto, reference to which is hereby made as though fully incorporated herein. (The said Exhibit A which is attached to the plea in abatement includes as a part thereof Exhibits A and B thereto, which formed a part of the said bill of complaint and are the same contract and amendment referred to above.)

C. Subsequently and on, to-wit, November 2, 1956, the complainant in the said equity case filed an amended complaint therein, a copy of which said amended complaint is attached to the plea in abatement which was filed in this cause on March 4, 1960, where it was marked and identified as Exhibit B thereto, reference to which is hereby made as though fully incorporated therein.

D. Thereafter and on, to-wit, May 10, 1957, the respondents in the said equity case, namely, Julius Clarence Webb, who is the plaintiff in this case, and Leila Glover Webb filed an answer and cross bill in the said cause, a copy of which said answer and cross bill is attached to the plea in abatement which was filed in this cause on March 4, 1960, where it was marked and identified as Exhibit C thereto, reference to which is hereby made as though fully incorporated herein.

E. Thereafter and on, to-wit, May 13, 1957, the complainant in the said cause, John D. Fox, Jr., one of the defendants in this cause, filed an answer to the cross bill, a copy of which said answer is attached to the plea in abatement which was filed in this cause on March 4, 1960, where it was marked and identified as Exhibit D thereto, reference to which is hereby made as though fully incorporated herein.

F. Thereafter and on, to-wit, May 22, 1957, the said equity court rendered a decree in the said cause, a copy of which said decree is attached to the plea in abatement which was filed in this cause on March 4, 1960, where it was marked and identified as Exhibit E thereto, reference to which is hereby made as though fully incorporated herein.

G. Thereafter and on, to-wit, July 8, 1957, the complainant and cross respondent in the said cause, John D. Fox, Jr., who is the same person as John D. Fox, Jr., one of the defendants in this suit, filed an appeal to the Supreme Court of Alabama and security for costs of the said appeal, a copy of which said appeal and security for costs is attached to the plea in abatement which was filed in this cause on March 4, 1960, where it was marked and identified as Exhibit F thereto, reference to which is hereby made as though fully incorporated herein.

H. Thereafter and on, to-wit, September 4, 1957, the said appellant, John D. Fox, Jr., filed an appeal bond in the said equity case, which superseded the said decree of the trial court dated May 22, 1957, with the defendant, The Fidelity and Casualty Company of New York, a corporation, as surety thereon, a copy of which said appeal bond is attached to the plea in abatement which was filed in this cause on March 4, 1960, where it was marked and identified as Exhibit G thereto, reference to which is hereby made as though fully incorporated herein.

I. Thereafter the Supreme Court of Alabama at its special 1958 term and on, to-wit, September 11, 1958, affirmed the said decree of the trial court (First Division, No. 745, opinion

reported 268 Ala. 111). A copy of the Certificate of Affirmance in the said cause is attached to the plea in abatement which was filed in this cause on March 4, 1960, where it was marked and identified as Exhibit H thereto, reference to which is hereby made as though fully incorporated herein. After the said decree of the trial court in the said equity proceeding was affirmed by the Supreme Court of Alabama in the proceeding set out above and on, to-wit, September 23, 1958, the defendants, John D. Fox, Jr., and The Fidelity and Casualty Company of New York, paid the judgment in the said cause, the statutory penalty and costs, amounting to \$1440.62.

J. The said equity suit and this suit are for the same cause of action. Julius Clarence Webb, who was one of the respondents and the cross complainant in the said equity case, and Julius Clarence Webb, the plaintiff in this suit, is one and the same person. John D. Fox, Jr., the complainant and cross respondent in the said equity suit, and John D. Fox, Jr., the defendant in this suit, is one and the same person. The defendant, The Fidelity and Casualty Company of New York, a corporation, surety on the said bond, is in privity with the said defendant, John D. Fox, Jr.

WHEREFORE, the defendants aver that their liability under the agreement and bond described above was adjudicated in the final decree in the said equity case and the plaintiff is estopped by the said final decree in the said equity case from the further prosecution of this suit.

4. For the allegations of this plea the defendants adopt all of the allegations of Plea 3 which are set out above through and including Paragraph J thereof, just as though the said adopted allegations were specifically rewritten here, and add the following:

The defendants further allege that their liability under the said contract between the plaintiff and the defendant, John D. Fox, Jr., dated September 20, 1955, and the amendment thereto dated September ____, 1955 (which instruments are made a

Filed
3-11-68

130

JULIUS C. WEBB,

Plaintiff,

VS.

THE FIDELITY AND CASUALTY COMPANY
OF NEW YORK, a corporation, and
JOHN D. FOX, JR.,

Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW NO. 3038

Jul 3/11/60
Wm. J. Blackburn

J. B. BLACKBURN
ATTORNEY AT LAW
BAY MINETTE, ALABAMA

JULIUS C. WEBB,	X	
Plaintiff,	X	IN THE CIRCUIT COURT OF
	X	
vs.	X	BALDWIN COUNTY, ALABAMA
	X	
THE FIDELITY AND CASUALTY	X	
COMPANY OF NEW YORK, a	X	
corporation, and JOHN D.	X	AT LAW NO. 3038
FOX, JR.,	X	
Defendants	X	

Comes now the Plaintiff in the above styled cause, by his attorneys, and amends his Complaint so that the same shall read as follows:

COUNT ONE:

The Plaintiff claims of the Defendants Two Thousand Nine Hundred and Fifty-eight and 66/100 Dollars (\$2,958.66) for the breach of the condition of a bond, a copy of which is attached to the original Complaint and marked "Exhibit A" and by reference made a part hereof as though fully incorporated herein, made by the Defendants on the 30th day of September, 1955, payable to the Plaintiff in the sum of Eight Thousand Seven Hundred and Fifty Dollars (\$8,750.00) with the condition that the Defendant, John D. Fox, Jr., would indemnify the Plaintiff for all loss that he might sustain by reason of the said Defendant's failure to comply with any of the terms of a written contract for the construction of a private dwelling located at 513 N/S College Avenue, Daphne, Alabama, (hereinafter referred to as the "construction contract") which said construction contract was dated September 20, 1955 and a copy of which is attached to the original Complaint and marked "Exhibit B" and by reference made a part hereof as though fully incorporated herein. And the Plaintiff alleges that the condition of the said bond has been broken by the Defendant, John D. Fox, Jr., in this: That the Defendant, John D. Fox, Jr., has not indemnified the Plaintiff for all losses that he has sustained by reason of the failure of the Defendant, John D. Fox, Jr., to comply with the terms of the construction contract hereinabove referred. And the Plaintiff further alleges that the Defendant, John D. Fox, Jr., failed to comply with the terms of said construction contract in that he fail-

ed to construct said dwelling house in a substantial and workmanlike manner or in accordance with the plans, blueprints and specifications and he failed to complete said dwelling within the time agreed upon, and as a proximate result of the breach by the Defendant, John D. Fox, Jr., aforesaid, the Plaintiff suffered damages in this: He was required to pay Two Hundred and Thirty-four and 79/100 Dollars (\$234.79) more to the Merchants National Bank of Mobile, Alabama, than he would have paid had the said construction contract been completed in accordance with the plans and specifications and within the time agreed upon, said amount representing the difference in the rate of interest on a construction loan by said bank to the Plaintiff at six per cent (6%) and the rate of interest, four and one-half per cent ($4\frac{1}{2}\%$), prevailing on F. H. A. loans in January, 1956, (the completion date of said construction contract) from January, 1956 to October, 1958 (the date when the Plaintiff was able to close his loan). One Thousand One Hundred and Twenty-one and 26/100 Dollars (\$1,121.26), being the additional interest ($4\frac{1}{2}\%$ as compared to $5\frac{1}{2}\%$) which it will be necessary that the Plaintiff pay on the F. H. A. mortgage and note on the dwelling house due to an increase in F. H. A. interest rates from $4\frac{1}{2}\%$ to $5\frac{1}{2}\%$ prior to the closing of the loan of the Plaintiff on said dwelling house and subsequent to the date on which the loan could have been closed had the contract hereinabove referred to be completed in January, 1956, the date agreed upon for the completion thereof; Two Hundred Dollars (\$200.00) as the reasonable rental value of said property from January, 1956 (the completion date of said contract) to April, 1956 (the date of which the Plaintiff moved into said dwelling house); Sixty Dollars (\$60.00) as the cost to the Plaintiff of securing three (3) commitment renewals from the F. H. A.; Thirty-five Dollars (\$35.00) as the cost of seven (7) additional inspections by the F. H. A.; Twenty Dollars (\$20.00) as the amount paid by the Plaintiff to Mrs. Louise Dusenbury for the taking of a deposition upon oral examination in that certain cause in the Circuit Court of Baldwin County, Alabama, In Equity, numbered 3807 wherein John D. Fox, Jr. was the Complainant and Cross-respondent and the Plaintiff was the Respondent and Cross-complainant; One Thousand and Ten and 61/100 Dollars (\$1,010.61) as reasonable attorneys' fee paid to W. O. MacMahon, III, and Chason & Stone, Attorneys at Law, for services rendered by

them for and on behalf of the Plaintiff in regard to the defense of the suit hereinabove referred to and in the prosecution of the counter-claim of the Plaintiff in said suit and Three Hundred and Twelve Dollars (\$312.00) as interest which the Plaintiff was required to pay on a loan of Fifteen Hundred Dollars (\$1,500.00) from the Post Office Credit Union, Mobile, Alabama, made by the Plaintiff in order to repair and refinish his house and to meet the obligations hereinabove referred to; all in the total amount of Two Thousand Nine Hundred and Fifty-eight and 66/100 Dollars (\$2,958.66), together with interest thereon from October, 1958. Wherefore Plaintiff brings this suit and asks judgment in the above amount.

COUNT TWO:

The Plaintiff claims of the Defendants Two Thousand Nine Hundred and Fifty-eight and 66/100 Dollars (\$2,958.66), for the breach of the condition of a bond made by the Defendants on the 30th day of September, 1955, payable to the Plaintiff, in the sum of Eight Thousand and Seven Hundred and Fifty Dollars (\$8,750.00), with the condition that the Defendant, John D. Fox, Jr., would indemnify the Plaintiff for all loss that he might sustain by reason of the said Defendant's (John D. Fox, Jr.) failure to comply with any of the terms of a written contract for the construction of a private dwelling located at 513 N/S College Avenue, Daphne, Alabama, which construction contract was dated September 20, 1955. And the Plaintiff says the condition of said bond has been broken by the Defendants in this: First, the Defendants have failed to pay to the Plaintiff the sum of Two Hundred and Thirty-four and 79/100 Dollars (\$234.79) as excess interest which the Plaintiff had to pay to the Merchants National Bank of Mobile, Alabama, on the construction loan secured by him from that institution covering the period of time from January, 1956 (the contract completion date) to October, 1958 (the date when the Plaintiff was first able to secure an F. H. A. loan), said construction loan being made at the rate of interest of six per cent (6%) as compared to the rate of four and one-half per cent ($4\frac{1}{2}\%$) which the Plaintiff would have been required to pay had his dwelling house been constructed in accordance with the contract referred to above and completed on the date referred to above; Second, the Defendants have failed to pay to Plaintiff the sum of One Thousand One Hundred and Twenty-one and 26/100

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Dollars (\$1,121.26), the damage which the Plaintiff sustained by reason of the breach of the Defendant, John D. Fox, Jr., of the contract hereinabove referred to by having to enter into a loan agreement and execute a promissory note to secure the F. H. A. mortgage on his home at an interest rate of $5\frac{1}{2}\%$ as compared to an interest rate of $4\frac{1}{2}\%$, which latter interest was the prevailing interest rate at the time said dwelling house should have been completed in accordance with said contract, said interest rates having been increased to $5\frac{1}{2}\%$ prior to the time that the Plaintiff was able to close this loan on his said dwelling house, his failure to do so being a result of the breach by the Defendant, John D. Fox, Jr., of said construction contract; Third, the Defendants have failed to pay to the Plaintiff the sum of Two Hundred Dollars (\$200.00) as damages which he sustained by reason of not being able to occupy his dwelling house for the period of time from January, 1956 (the completion date of said construction contract) to April, 1956 (the date on which the Plaintiff moved into said dwelling house) which sum of Two Hundred Dollars (\$200.00) is the reasonable rental value of said property during said period of time; Fourth, the Defendants have failed to pay to the Plaintiff the sum of Sixty Dollars (\$60.00) as damages which he sustained by reason of having to secure three (3) commitment renewals from the Federal Housing Authority at the rate of Twenty Dollars (\$20.00) each by reason of being unable to close a loan on said dwelling house because of the fact that the Defendant, John D. Fox, Jr., had filed a statement of lien in the Probate Court of Baldwin County, Alabama against said dwelling house and the land upon which the same is situated; Fifth, that the Defendants have failed to pay to the Plaintiff the sum of Thirty-five Dollars (\$35.00) which amount the Plaintiff was required to pay to secure seven (7) additional inspections from the Federal Housing Authority at the rate of Five Dollars (\$5.00) each; Sixth, that the Defendants have failed to pay to the Plaintiff the sum of Twenty Dollars (\$20.00) as damages which the Plaintiff sustained by reason of having to pay to Mrs. Louise Dusenbury said sum for the taking of a deposition upon oral examination in that certain cause in the Circuit Court of Baldwin County, Alabama, In Equity, numbered 3807 wherein John D. Fox, Jr., was the Complainant and Cross-respondent and the Plaintiff was the Respondent and Cross-complainant; Seventh:

that the Defendants have failed to pay to the Plaintiff the sum of One Thousand and Ten and 61/100 Dollars (\$1,010.61) as damages which the Plaintiff was required to pay as a reasonable attorneys' fee to W. O. MacMahon, III, and Chason & Stone, Attorneys at Law, for services rendered by them for and on behalf of the Plaintiff in regard to the defense of the suit hereinabove referred to and in the prosecution of the counter-claim of the Plaintiff in said suit; and, Eighth, the Defendants have failed to pay to the Plaintiff the sum of Three Hundred and Twelve Dollars (\$312.00) as damages which he sustained in that he was required to pay said sum as interest upon a loan of Fifteen Hundred Dollars (\$1,500.00) from the Post Office Credit Union, Mobile, Alabama, said loan being made by the Plaintiff in order to repair and refinish his house to comply with the terms of said construction contract and to meet the obligations hereinabove referred to; all to the damage of the Plaintiff as above stated, wherefore he brings this suit and asks judgment in the above amount.

W. O. MacMAHON, III

and

CHASON & STONE

By: 
Attorneys for Plaintiff

The Plaintiff demands a trial
of this cause by a jury.

CHASON & STONE

By: 
Attorneys for Plaintiff

Filed
2-23-59

3038

JULIUS C. WEBB,
Plaintiff,

vs.

THE FIDELITY AND CASUALTY
COMPANY OF NEW YORK, a cor-
poration, and JOHN D. FOX, JR.

AMENDED COMPLAINT

IN THE CIRCUIT COURT OF

BADWIN COUNTY, ALABAMA

AT LAW NO. 3038

FILED

FEB 23 1959

ALICE J. DUCK, Clerk

LAW OFFICES

CHASON & STONE

BAY MINETTE, ALABAMA

JULIUS C. WEBB,

VS.

Plaintiff,

THE FIDELITY AND CASUALTY
COMPANY OF NEW YORK, a
corporation, and JOHN D.
FOX, JR.,

Defendants.

IN THE CIRCUIT COURT OF
BALDWIN COUNTY, ALABAMA
AT LAW NO. 3038

MOTION

Now come the defendants, each separately and severally,
and show unto the court as follows:

1. John D. Fox, Jr., as complainant, filed a suit in
the Circuit Court of Baldwin County, Alabama, in Equity, on
June 12, 1956, against Julius Clarence Webb and Leila Glover Webb
to enforce a mechanic's and materialman's lien. A copy of the
Summons and Bill of Complaint in the said cause was served on
Leila Glover Webb on June 12, 1956, and a copy of the Summons and
Bill of Complaint was served on the respondent, Julius Clarence
Webb, on June 18, 1956.

The said respondents filed a demurrer in the said cause
on July 10, 1956, which was sustained by the Judge of the Circuit
Court of Baldwin County, Alabama, in Equity, on October 18, 1956.

On November 10, 1956, the complainant filed an amended
Bill of Complaint in the said cause, and on February 7, 1957, the
said respondents filed a demurrer to the amended Bill of Complaint.
Up to the time of the filing of this motion no decree has been
rendered overruling or sustaining the respondents' said demurrer
to the amended Bill of Complaint in the said cause.

2. John D. Fox, Jr., who is one of the defendants in
this suit, is the same person as John D. Fox, Jr., who is the com-
plainant in the above described equity suit, and Julius C. Webb,
who is the plaintiff in this suit, is the same person as Julius
Clarence Webb, who is one of the respondents in the above described
equity suit.

The contract which forms the basis of this suit, and which is described in the original and amended complaint filed in this suit, is the same contract which forms the basis of the above described equity suit. The said equity case and this case involve the same property and the same cause of action as that involved in this suit.

WHEREFORE, defendants move the court to transfer this cause to the Circuit Court of Baldwin County, Alabama, in Equity, and consolidate this cause with the pending equity case, which is described above.

Defendants move the court to grant unto them such other, further and general relief as they may be properly entitled to, the premises considered.

J. B. Blackburn
Attorney for defendants

Filed

2-19-57